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# A SECOND DISSERTATION

Concerning the Right of the  
DUTCH EAST-INDIA COMPANY  
To the Trade and Navigation of the *East-Indies*,  
AGAINST

*The Inhabitants of the SPANISH, now AUSTRIAN,  
NETHERLANDS.*

In answer to the objections of Mr. P. MAC NENY,  
Counseor & Proc. Fiscal, to His Imperial &  
Catholick Majesty.

*Written by order of the Directors of the Dutch East-India  
Company, by ABRAHAM WESTERVEEN,  
Advocat, Counsellor & Secretary to the  
said Company.*

Done into English, with some notes, by T. J.



H A G U E;  
Printed for T. JOHNSON.  
M. DCC. XXIV.

# A SECOND DISSERTATION

Concerning the Right of the

DUTCH EAST-INDIA COMPANY

to the Trade and Navigation of the East-Indies

AGAINST

the Pretensions of the SPANISH, PORTUGUESE, and  
OTHER EUROPEAN NATIONS

in Answer to the objections of Mr. P. MAC NEILY,  
of the University of Leiden, to His Imperial  
Catholic Majesty.

By G. J. VAN DER LINDEN, of the Dutch East-India  
Company, by ABRHAM WESTERHOF,  
Advocate, Counselor & Secretary to the  
said Company.

Transl. into English, with some notes, by T. J.



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# DISSERTATIO SECUNDA

De Jure quod competit

SOCIETATI PRIVILEGIATAE FODI  
RATI BELGII

Ad Navigationem & Commercea Indiarum Orientalium

ADVERSUS

Legem BELGICAM HISTORICAM, LEGEM AUSTRIACAM

Quae respondent objectionibus Viri Nobilissimi

J. MAC. NENY, Sac. Cai. & Cons. Suae Majestatis

Consilium & Procuratoris Fidei.

Amstelredamum, Apud J. D. Dordrechtum, Apud J. P. Parthenium

typis Curatorum, Fodorum Belgii, conscripta

AB ABRAHAMO WESTERBEK, Jura

Belgici Societatis & Consilium C. Secretum.

Ex Libris Amstelredamensis, & apud Dordrechtum, apud J.



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M. DCC. LXXV.

# DISSERTATIO SECUNDA

De Jure quod competit

SOCIETATI PRIVILEGIATÆ FOEDERATI BELGII

Ad Navigationem & Commercia *Indiarum Orientalium*;

ADVERSUS

*Incolas BELGII HISPANICI, hodie dicti, AUSTRIACI.*

Qua respondetur objectionibus Viri Nobilissimi  
P. MAC. NENY, Sac. Cæs. & Cath. Sux Majestatis  
Confiliarii & Procuratoris Fisci.

*Mandatu DD. Directorum Societatis Privilegiatæ Indiarum Orientalium Fæderati Belgii conscripta ab  
ABRAHAMO WESTERVEEN Icto.  
eidem Societati a Consiliis & Secretis.*

Ex Latina Anglicam fecit, & notis quibusdam auxit T. J.



HAGÆ COMITUM,  
Apud THOMAM JOHNSON.  
M. DCC. XXIV.

# DISSERTATIO

S E C U N D A,

*De Jure quod competit SOCIETATI PRIVI-  
LEGIATÆ FOEDERATI BELGII,*

*Ad Navigationem & Commercia Indiarum Orientalium.*

A D V E R S U S

Incolas BELGII HISPANICI, hodie dicti  
AUSTRIACI.

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A S E C O N D

DISSERTATION,

*To prove the Right of the*

DUTCH EAST-INDIA COMPANY,

A G A I N S T

The Inhabitants of the SPANISH, now  
AUSTRIAN NETHERLANDS.



Postquam Hispaniarum Rex Art. IV. Fœderis Induciarum Anno 1609. septem Fœderatis Provinciis Navigationem & Commercium exercere ultra Europæ limites, ad Indiarum loca libera concesserat, ista conditione, ut a locis Hispanorum abstinere, manentibus reliquis Belgii Provincis sub prohibitione Hispanicæ lege, non ultra Europæ limites navigarent; verum quidem est, (prout refert Solorzanus de jure Indiar. Lib. 2. Cap. 25.) Regem, quam primum tempus Induciarum exierat, bellum resuscitasse, quo tandem Batavos ad hujus Navigationis & Commerci exercitio penitus abstinere cogeret. Verum hoc non ita ex sententia ipsi successit: contra enim anno 1648. pace facta evenit, ut Batavi sibi liberum stipulati sint, & obtinuerint totum illum tractum Maris, qui Privilegio a P. P. D. D. Ordinibus Societati Indiarum Orientalium antehac concesso, & a Rege deinceps agnito continebatur, cum exclusione subditorum Regis, ne ad limites fœdere prohibitos navigarent, aut navigationes suas ulterius extenderent, quatinus navigare ipsi tunc temporis erant soliti: sicut hoc ex sæpius allegato Articulo V. ejusdem fœderis jam ante probavimus, & nunc cum solutione eorum, qua Belgii Hispanici, hodie Austriaci Incolis, contra verum hujus Articuli sensum objicere placuit, paulo amplius sumus probaturi.

I. Quod ut eo compendiosius peragatur, putamus totam hanc questionem, ad hæc tria capita commodè reduci posse & Primo quidem, quod Prædicti incolæ urgere conantur, sub lege prohibitionis dicti Art. V. Pacis Monast. solummodo comprehendendi Castellanos, seu Hispanos, at non reliquos, qui tempore istius fœderis Regi Hispaniarum erant subiecti, veluti Brabantos & Flandros.

Secundo, Ne ipsos quidem Castellanos, sive Hispanos, eodem articulo a toto tractu maris, quo ante Fœdus Monasteriense navigare non erant assueti, exclusos fuisse; sed tantum à singulis locis Societati Fœderati Belgii in hoc tractu propriis, reliquum vero mare ipsi atque omnibus liberam mansisse voluit.

Tertio, Si forte concedant isto Prohibitionis pacto, Belgii Hispaniarum Incolæ ac Hispanos teneri, contendunt tamen illud ad Imperatorem Romanum minime pertinere, qui Belgicas Provincias, ut ajunt, non acquisivit, nec possidet tanquam successor Philippi IV. Hispaniarum Regis, qui Fœdus Monast. cum Fœderato Belgio fecit; aut tanquam hæres Caroli II. postremo defuncti Regis, sed tanquam Burgundia Dux; non secus, ac Duces Burgundia easdem Provincias possederunt, antequam in ditionem Regis Hispano-





Y the IV. Article of the Truce concluded in 1609. the King of Spain allowed the Inhabitants of the united Provinces to carry on their Trade & Navigation, without the bounds of Europe, to all free places of the Indies; with this restriction only, that they should not go to such places as were in the possession of the Spaniards: Whereas the Inhabitants of the other Provinces, or Spanish Netherlands, remained still under the restraint of the Spanish prohibition, by which they were forbid to navigate beyond the limits of Europe. 'Tis true, as *Solorzanus* says, that the King of Spain, as soon as the Truce was expired, began the war again that he might oblige the Dutch entirely to abstain from that Trade & Navigation. But he did not succeed in that according to his intentions: on the contrary, by the Treaty of Peace made in 1648. the Dutch stipulated & obtained that whole extent of seas comprehended in the Patent that the States had granted to their East-India Company, which was afterwards allowed by that King, while his own Subjects were excluded, from navigating to such places as were prohibited by the Treaty, & forbid to extend their navigation beyond what they were then accustomed to doe. This has been already proved by the V. Article of the Treaty of 1648. & shall be here further illustrated, with answers to such objections as have been made on behalf of the inhabitants of the Spanish, now Austrian Netherlands, against the true intention of that Article.

De Jure  
Indiar. L.  
II. C. 25

To do this with more clearness & brevity, we shall divide this whole dispute into these three heads, which comprehend all the Arguments offered in favour of the present Inhabitants of the Austrian Netherlands.

I. They pretend that the Prohibition contained in the said V. Article of the Treaty of Munster concerns only the Castilians or Spaniards, but not any other people then subject to the K. of Spain, such as those of Flanders & Brabant.

II. That even the Castilians or Spaniards themselves, are not excluded by the said Article from the whole extent of sea which they did not use to navigate before the Treaty of Munster, but only from such places in those seas as were then possess'd by the Dutch E. India Company, so that all other places of those seas remained free & open for them & all others.

III. That supposing this Prohibition in the V. Article aforesaid should concern the Inhabitants of the Spanish Netherlands, as well as the Spaniards themselves; yet that does not concern his present Imp. Majesty, who has not (as they say) acquired, or does not possess those Netherlands in quality as Successor to Philip IV. K. of Spain, who made that Treaty with the Dutch, nor yet as Heir to K. Charles II. last deceased; but as Duke of Burgundy, with the same rights & prerogatives as they were possessed by the Dukes of Burgundy be-

rum transissent, hoc est, purè & ab hoc pacto seu Prohibitionis lege immunes, quales illas ante etatem, Philippi I. cognomento Pulcri fuisse volunt.

## C A P. I.

§. I. Quod attinet ad primam quæstionem, diximus antea incolas Belgii Hisp. a tempore detecti novi Orbis, usque dum prædicta Provincia in ditionem Casarea sua Majestatis redacta sunt, ad commercia Indiarum sive Orientalium, sive Occidentalium, nunquam admissos, sed expressis legibus inde prohibitos fuisse; & probavimus illud non solum antiquis Hispan. legibus, qua omnes alienigenas, præter Hispanos, ab his Commerciis excludunt; sed etiam per Instrumentum Cessionis, quo Belgii Provincia, a Philippo II. Archiducibus Alberto & Isabella ceduntur, hac expressa conditione adjecta, ne unquam ad Indias Orientales seu Occidentales, Commerciorum causa Navigationem instituerent. Probavimus præterea per Articulum 4. Fœderis Induciarum, quo solis Unitis Provinciis facultas data est commercia exercendi ultra Europa limites ad ea loca, qua in diffinis Indiarum regionibus essent sui juris, & libera; Reliquis vero Decem Provinciis, Archiducibus subiectis, eadem libertas minime indulta est, utpote qua generalibus & expressis dicti Articuli verbis intra Europa limites coercentur. Probavimus hoc etiam, sed obiter, per id quod contigit Antverpia, secundum relationem Em. a Meteren, Anno 1600. & tandem etiam per constantem usum, & continuam harum legum ac Fœderis Monasteriensis observantiam, ad hanc usque ætatem.

Atque hac certa esse, nec eniquam dubia videri posse putassemus, nisi vir Nobiliss. D. P. Mac Neny, auctor libri, cui titulus: Refutation des argumens avancés de la part de Messieurs les Directeurs des Compagnies d'Orient & d'Occident des Provinces-Unies, contre la liberté du commerce des habitans des Païs-Bas, &c. nuper Bruxellis editi, dum partem seu Societatem commerciorum nostrorum ad Indiarum oras, Belgii Hispanici, hodie Austriaci Incolis vindicare studuit, omnia iret inficias; quamquam ipse passim tam obscure & implicate loquitur, ut plerisque in locis magis intelligi possit, quid omnino non dicat vel probet, quam quid dicere, aut ex dictis concludere velit. Sic, cum probare nititur §. 7. Refutationis suæ, legem de prohibita Navigatione ad Indias in Brabantia semper visam esse injustam, allegat quidem locum ex dicto à Meteren Lib. 20. ubi reperitur epistola incerti auctoris, qui plurima referens de iniquitate dicti Instrumenti Cessionis, inter alia iniquum esse ait, Belgii incolas ab Indiciis commerciis in æternum exclusos esse; sed nihil inde elicit aut concludit: Præterea, sicut hac epistola publico nomine scripta non est, & ne in ipsa quidem Brabantia, ut videtur, sed alibi a quodam anonymo, quamvis ad Prælatum quendam in Brabantiam missa sit, ex eodem

fore they fell under the dominion of Spain; that is independent & free from any such restraint or convention, so as they were, say they, before Philip the first, Duke of Burgundy.

## S E C T. I.

As to the first head, we have already said that the Inhabitants of the Spanish Netherlands, ever since the discovery of the new world, to the time that those Provinces were brought under the dominion of his Imperial Majesty, have never been allowed to have any trade to the Indies either East or West; but that they have by express laws been restrained from it. And this we have proved, not only by the old Laws of Spain, which exclude all others beside Spaniards from any such trade, but also by the Act of Cession by which *Philip II.* yielded those Provinces to the Archduke & Dutchess *Albert & Isabel*, with this express restriction, *that they should never undertake any navigation on account of trade to either East or West-Indies.*

Another proof of this we took from the IV. Article of the Truce made in 1609. by which the United Provinces only are allowed to trade without the limits of Europe, to all free & independent places of the Indies: whereas no such liberty is granted to the other Ten Provinces under the Archduke; but they are restrained within the limits of Europe by the general express words of that Article. For a further proof we mentioned cursorily what happened at Antwerp in 1600. as it is related by *Em. van Meteren*: & to confirm all these proofs we shewed the continued practice & constant observation of those Laws & Treatys to this present time.

These proofs & reasons we imagined were so plain & clear as to leave no doubt with any reasonable man: yet we see them all controverted by Mr. Mac Neny a Gentleman at Brussels, in a piece lately printed there called *A Confutation of the Reasons alleged by the Directors of the East & West-India Companys of the United Provinces, against the liberty of trading to forreign Countries by the Inhabitants of the Netherlands subject to his Imp. Majesty &c.* In which the Author endeavours to establish a certain right which he thinks should belong to the Inhabitants of those Austrian Netherlands to share with us in our Navigation & trading to the East & West-Indies: tho' he is so perplexed & intricate in all that piece, that it is much easier to perceive what he does not prove, than what he does or would prove from most of the reasons he adduces. As in the 7. Sect. of his *Confutation &c.* to prove that this restraining from all commerce to the Indies was always deemed unjust in Brabant, he quotes a place of the aforesaid *Van Meteren* where mention is made of a Letter written by, one knows not who, which taking notice of several unjust things in the *Act of Cession*, among the rest says, „it was not just that all the Inhabitants of the Low „Country should be for ever excluded from all concern in the Indies. But he neither proves any thing, nor draws any conclusion from this; nor indeed could he from a nameless Letter, owned by no body, nor, it seems, written in Brabant,



eodem a Meteren lib. 20. in princ. fol. 432. *evidenter apparet, Brabantia Proceres cum juramentum fidelitatis super actu Cessionis praestandum esset, de hac re nihil conquestus esse, considerantes hac ita Regibus & Principibus suis antiquitus visum esse, nec non Pontifici Maximo sic placuisse, seque illud interdictum commune habere cum ceteris Regis subditis, & quodammodo etiam cum aliis Europae populis, qui Regis subditi non erant; unde etiam post Pacem Monasteriensem Antverpiensis Fictus Franciscus Zypaeus in libro, cui titulus, Notitia Juris Belgici. lib. 12. cap. ultimo justitiam Regis prohibentis hac commercia laudibus extollit, atque hac memoria posteritatis mandare nullus dubitavit. Verba ejus sunt haec:*

De navigatione Indica ceteris gentibus, praeter Hispanos atque Lusitanos prohibita, atque ut mare non liberum, ut voluit Grotius, sed potius Iberum hostie est censendum, diximus in *Jure Pontificio Nov. Anal. titul. de Summa Trin.* in fine. Eamque navigationem Alexander VI. commerciorum aliave quacunque de causa susceptam prohibuit, sub excommunicationis latae sententiae poena; merito ut praemium Insularum illis Regibus, qui tam sanctam operam fidei propagandae navassent in iis detegendis, cederet non tantum, sed & ne rectae fidei cunabula ibi contaminarentur ab iis, qui domi suae religionem conspurcassent: qua de causa, pluribusque politicis, si recte Josaphat Rex Judae noluit Regem Israel ad classem suam, in insulam Ophir ex more majorum navigantem, ad auri opumque societatem admittere. Rex Chatholicus, ne alii in Indias navigent tam julte armis prohibet, quam legibus interdicit.

§. II. Sic etiam §. 7. Refut. suae, supradict. D. Neny negat incolas Belgii Provinciarum, qui Archiducibus erant subjecti, per art. 4. foederis Induciarum anni 1609. a commercio Indiarum exclusos esse, vel patias, ut ante fuerant, exclusos mansisse, quod Dissert. nostrae §. 4. & 5. notaveram; non ut inde inferrem exclusionem seu prohibitionem illam respectu nostri esse obligatoriam, propterea quod eodem articulo incolis Federatarum Provinciarum libertas ad hoc commercia certis quibusdam conditionibus datur; sed unice ut demonstrarem, Federatas Provincias a prohibitione generali de non navigando ultra Europae limites exemptos esse, adeoque hoc articulo libertatem illis esse datam, quam ceteris Provinciis data non est: quod ut clarius liqueat, integrum d. art. textum ex versione Latina D. Baudii, aut alterius cujuscunque auctoris, ut invenitur postscriptum praedicti Baudii de Induciis pag. 308. hic exhibebo.

Subditi & Inquilini utriusque partis, tam Regis & Archiducis, quam Federatarum Ordinum, invicem colunt mutuam benevolentiam & amicitiam, nec fas jusque esto praeteriti temporis damna vel offensiones ulcisci aut exprobare. Sunt libera utriusque negociandi Commercia per terras, maria, per flumina, quod ta-



bant, but in some other place, & pretended to be sent to a certain Prelat in Brabant. But another thing (which this Author has not thought fit to take any notice of) appears very plain from *Van Meteren*, that the States of Brabant when they swore allegiance to the Archduke, upon this Act of Cession, made no complaint on account of this Prohibition, nor any mention of it in their Remonstrance; feing this had been always so ordered by their Kings or Princes, was so decided by the Pope, & was common to them with many others of the Kings Subjects, & in some measure with other Nations of Europe which were not Subjects of that King. And we see that even after the Treaty of Munster, a famous Lawyer of Antwerp *Francis Zypeus* in his Book entitled, *The Knowledge of the Belgic Law*, extolls with high praises the Kings justice in forbidding this trade to the Indies, in these following words.

Lib. XX.  
fol. 431.

See this  
Remonstr.  
confist. of  
17. Articles  
ibid.

Lib. XII.  
Cap. ult.

„ Concerning the navigation to the Indies forbid to all other people beside the Spaniards & Portugese, & how the seas are not now to be esteemed free, as Grotius would have them, but rather entirely *Spanish*, I have treated, in *Jure Pontif. nov. anal. Tit. de Sum. Trin. in fine*. This Navigation, whether undertaken on account of Trade, or on any other account whatsoever, is also prohibited by Pope Alexander VI. on pain of Excommunication *ipso facto*; not only that the benefit of those Islands might belong only to those Kings that had so much contributed to the holywork of propagating the Gospel in discovering them, but also that the true Religion might not be defiled there in its infancy, by such as had polluted it in their own countrys: for which, & many other political reasons, as *Jehosaphat*, King of Juda, justly refused to admit the King of Israel into Society in the fleets he sent, as his predecessors had done, to *Ophir* to bring Gold & precious things, so the King of Spain, with equal justice, restrains by Arms, & forbids by Laws all others from trading to the Indies.

§ II. Mr. *Neny* pretends that the Inhabitants of the Netherlands, Subjects of the Archduke & Dutchess were not excluded from all commerce with the Indies by the IV. Art. of the Treaty of Truce in 1609. or did not continue as they had formerly been under such an exclusion or restriction, so as I had laid down in my former Dissertation; not with design to prove that that prohibition was obligatory with regard to us, because by that Article the liberty of trading to the Indies was allowed to the United Provinces on certain conditions; but only to shew that the United Provinces were exempted from the general prohibition of trading without the bounds of Europe, & so had obtained by that Article a liberty which was not granted to the other Provinces. To make this more plain we shall here set down the said Article as it stands in President *Jeannin's* Negotiations.

Refut. Sec. 2.

Sec. 4. & 5.

T. 2. P. 449.

„ The Subjects & Inhabitants of both sides, that is of the said King & Archduke, & of the said States, shall live in good amity & friendship with one another during this Truce, without resenting the losses or injuries they may have

*men Rex Hispaniarum cupit restringi ad Regiones, terras ac provincias, quas possidet in Europa, vel ad alia regna dominiaque, quò Regum aut Principum amicorum subditi negociandi causa commeari solent: ab iis vero locis, portubus atque insulis, quæ extra fines prædictos sub ejusdem Regis imperio sitæ sunt, Ordines eorumque subditi abstinento, neque eò commerciorum causa proficiscuntur, nisi impetrato Regis consensu commeatuque. Quod vero attinet ad loca, qua aliis Regibus, Præceribus aut populis subjecta sunt, etiam extra limites Europæos, licet Ordinibus eorumque subditis iis in locis ac regionibus commercari ac negociari, dum id fiat, permittentibus locorum dominis, nec ullam moram aut impedimentum objiciet Rex ejusque Ministri, Vicarii aut Officiarii, quo minus domini locorum eam libertatem suo arbitratu concedant; nec ipsis Ordinum subditis negotium aut molestiam faceisset, quo minus eo jure commeandi commercandique libere utantur.*

*Videmus igitur hic duas res agi, & primo quidem commercia omnium incolarum totius Belgij per mare, per terras & flumina, intra Europa limites restringi, atque illis ne libertatem quidem concedi, ut navigare liceat ad Regiones Indiarum liberas: deinde hanc libertatem solis PP. DD. Ordinibus eorumque subditis dari, modo ista navigationis & commerciorum exercitio fiat cum permissione domini loci, & ab Hispanorum locis abstineant.*

§. III. Porro cum memoratus D. Neny eodem §. 7. probare conatur, Belgii Hiss. incolas hisce Fæderibus & Edictis non paruisse, aut saltem ex capite prohibitionis ab Indiarum commerciis non abstinuisse; sed forsitan, ut ait, quia hac commercia sibi haud utilia fore putabant; non allegat actus aliquot contrarios, quibus illos re vera non paruisse constet, aut contra hac edicta prohibitoria nihilominus navigare solitos esse, sed negat apud dictum à Meteren reperiri historiam, qualis illa compendiose narratur in Remonstracione DD. Directorum Societatis Indiarum Orientalium, tradita PP. DD. Ordinibus mense Martio anni 1720. & quam brevitati studens contractiorem aliquantulum repetivi Dissertat. nostra §. 2. nempe: cum initio præteriti seculi anno 1600. Mercatores quidam Antverpienses tentassent per ambages, sive nomine Batavorum Mercatorum, aut, ut ait dictus à Meteren, sub Hollandis pecunias suas impendere ad commercia Indica; Regem Hiss. hoc tam ægre tulisse, ut virum honoratum, nomine Gusman, Antverpiam ablegaverit ad perscrutandos mercatorum libros, & inquirendum, quis consors & particeps esset ejusmodi commerciorum, quæ à Rege erant prohibita; donec post multas persecuciones, quas ob hanc aliasque res illicitas erant perpeffi, tandem Belgii incolæ illud gravi exactione 600000 ducatorum luere sunt coacti.

have suffered heretofore. They may also freely travel & sojourn in one another's country, & safely trade or commerce with one another by land or water. Which according to the said Kings intentions should be restrained to the Kingdoms Country & Provinces that he is possessed of in Europe, or to such places & seas where the Subjects of other Kings or Princes his Friends & Allies have such trade with mutual consent of parties. But to such places Towns, ports or harbours as he is possessed of without the said limits, it shall not be lawful for the said States or their Subjects to trade in any sort, without express leave from the said King. Yet it shall be lawfull for them to trade, if they think fit, into the Country of any other Princes States or people that will allow them, even without those limits; and the said King or his Officers, Subjects, or dependants shall give no let or hinderance on that account to any such Princes States or People that shall give such allowance, nor yet to them, or others with whom they so trade.\*

We see here two things plain in this Article: 1. that all the commerce of the Inhabitants of the whole Low Countries was confined within the bounds of Europe, & that it was not lawfull for any of them to navigate to any place of the Indies. 2. That this liberty was granted to the States of the United Provinces & their Subjects only, provided they were allowed by the Sovereigns of the places, & that they abstained from places possessed by the Spaniards.

III. WHEN Mr. *Neny* pretends to shew that the Inhabitants of the Spanish Netherlands never had any regard to those Laws or conventions, or that they never abstained from trading to the Indies on that account; but perhaps, says he, because they did not think that trade worth their pains; he does not produce any Acts or proofs to shew that they refused to obey those Laws, or that they attempted any such trade contrary to the Prohibition, but contents himself to affirm boldly that there is no such passage in *Van Meteren's History*, as that which is mentioned in the Remonstrance of the Directors of our East-India Company to the States in March 1720. & which for brevity's sake I resumed in my former Dissertation, *Sett.* 2. in these words. „ When towards the beginning of the last age, in 1600. several Merchants of Antwerp began in a clandestine manner, or under the names of Dutch Merchants, or, as *Van Meteren* says, of Hollanders, to employ their stocks in trading to the Indies, the King of Spain took this so heinously, that he sent a person of note to Antwerp to search the Merchants books, & examine who had taken part or share in such trade, forbidden by his Majesty; till after a great many vexations on this & other accounts at last the Fleemish Merchants were forced to buy it off with a sum of 600000 ducats.

## B

## Now

\* There is a further confirmation of this liberty of trade in a separate or secret Article of the same date with this Treaty, by which the K: of Spain confirms the liberty here allowed the Dutch of trading to all places where the Sovereigns or people should suffer them, not only within the limits mentioned here, but every where else; & that they may trade safely & securely, promises solemnly to give no hinderance by sea or land, to them or those they trade with, &c. See *Negociat. de Jeanin To. 2. p. 457.*



*Sed quid iterum de veritate historia, & verò sensu illius rectus judicandum sit, nunc unicuique liquere poterit, dum integer locus, quanquam prolixus & variis rebus refertus, prout antiquitus Gallice redditus est, infra \* exhibebitur: unde apparebit, quam parum verosimile sit, quod Antverpienses clam & Hollandorum nomine, sive sub Hollandis, ut verba Historici sequar, commercia ad Indias exercuissent; quod prohibitorius Principum legibus obtemperare detrectassent, quum nunquam ullam navem ad Indias ipsi miserint: quod utilitatem hujus commercii non novissent, quum lucri faciendi gratia pecunias suas Hollandis, tunc temporis Regis hostibus, eò navigantibus commiserint. Sed maxime omnium admirandum videtur, quod huic argumentationi addit prædictus Dominus Neny, nullum populum in his, quæ sunt mera facultatis, jus suum non utendo, seu negligendo, amittere, modo non neglexerit, vel uti non omiserit, ex capite prohibitionis, dum ait: Et il est également constant, que si quelques Nations negligent le commerce de ces sortes de lieux, elles ne perdent pas pour cela la liberté d'y commercer, quand elles le trouveront convenir, par quelque laps de temps que ce puisse être; puisqu'on ne peut dire, qu'il leur auroit été défendu, mais parce qu'elles n'avoient cru, qu'il leur fut avantageux.*

*§. IV. Si argumentum hoc sumatur a Contrario, certum est D. Neny hoc ipso ratiocinio statuere, quod si ex causa prohibitionis aliquis neglexerit, aut omiserit jure suo uti, illum eo ipso jus suum amittere; quod verum esse, & in usu maris speciatim locum habere, Jurisconsulti communiter statuunt; ut videre licet apud Germanum Ictum Georg. Jacob. Leikherum de Jure maritimo cap. 8. ubi agens de præscriptione navigationis pag. 74. sic loquitur*

*Navigatio est actus meræ facultatis, contra quem non currit præscriptio, nisi prohibitione interveniente; Coler. Conf. I. n. 397. & tali tempore mare præscribi posse, & illud possidere, qui jurisdictionem & imperium in eo exercet, defendit Capoll. D. S. R. Præd. cap. 26. n. 5. 6. & 9. imo breviori tempore sc. 30. annorum præscriptione hoc determinat Schnydw. ad §. 1. de R. D. Kling ad d: §. 1. Item apud Maulium in Thesaur. theor. præd. ibique in trad. de Jure marit. tit. 5. n. 5. Nam si quis, inquit, per aliquot annos in certa maris parte piscatus sit, aut navigaverit, aliosque prohibuerit, sciente populo & non contradicente, tunc habet sibi quæsitum jus ex tacito populi consensu. Et paulo post: Licet enim ea, quæ jure gentium communia sunt, præscribi non possunt, tamen consuetudine acquiri possunt, & impræscriptibilia acquiruntur consuetudine.*

*Quum autem ex dictis nihil manifestius eluceat, nec quicquam clarius probari possit, quam quod Belgii Hisp. incola, unice propter prohibitionis causam, ab Indiarum commerciis abstinuerint; & ab omni tempore inde prohibiti fuerint, tam Ecclesiastici, quam Secularibus Constitutionibus & Edictis, non solum à Principibus suis, sed etiam*



Now as to the truth of this history, & the true meaning of that passage, we leave every one to judge for himself, having set down the whole passage at length, tho' somewhat prolix & treating of different matters, as it is in the French translation published in 1618. From which every one will be able to judge how unlikely it is that the Merchants of Antwerp would undertake the trade to the Indies clandestinely, & under the name or cover of the Hollanders, if they had been free to doe it openly themselves; that they refused to obey the prohibition of their Sovereigns, when they never sent one ship to the Indies: that they did not think this trade would turn to account, when desirous to share in the profits of it they trusted their stocks to the Hollanders who were then at open war with them. But the most curious of all is what Mr. *Nemy* adds to conclude this reasoning, viz., that no people can lose the right they have to a thing of that nature by merely neglecting to use that right &c. But take here his own words. „ It is „ also certain that if any people forbear to trade to such places, they do not for „ that lose the right to undertake such trading when they have a mind to it, by any „ lapse of years whatsoever; for it cannot be said they forbore it because it „ was forbidden, but because they did not think it worth their pains.

IV. LET us turn the other side this argument, & we will see clearly that M. *Nemy* grants, that if people forbear the use of any right because it is forbidden, they thereby actually lose that right: which is true, & especially as to the use of the sea, according to the common opinion of Lawyers. As one may see by G. J. *Leikher*, a German Lawyer, de *Jure maritimo* Cap. 8. p. 74. where treating of Prescription in matters of Navigation he says „ Navigation is an act perfectly „ free, against which there can be no prescription, except by a prohibition. „ *Coler. Conf.* 1. n. 397. and in such a time there may be prescription, & the sea „ may be in the possession of him that exercises empire & jurisdiction in it, according to *Capoll. D. S. R. Præd. Cap. 26. n. 5. 6. & 9.* and this time is determined to a short space, viz. 30. years by *Schnydw. ad §. I. de R. D. Kling ad d. §. I.* as likewise by *Maulius in Thesaur. theoret. pract. in Tract. de jure Maris. Tit. 5. n. 5.* For, says he, if any one for a number of years has fished or navigated in „ a certain place of the Sea, & has forbid others to do so, those others having „ consented without any difficulty or contradiction, that person has acquired a „ right by the tacit consent of those others. And a little lower; For tho' such things „ as are common by the law of nations are not lyable to prescription, yet they „ may be acquired by long use, & even things *unprescribable* are acquired by „ customs.

So nothing is clearer, from what has been said, nor can be more clearly made out, than that the people of the Spanish Netherlands forbore trading to the Indies because of the prohibition; and that they have always been forbid that trade, both by Ecclesiastical & civil Constitutions & Edicts, & have been hindered not

post *Fœdus Monasteriense*, à *Societate Privilegiata Fœderati Belgii*; quod exemplo *Bastiani Brouwer*, qui in litteris *Præsidis & Senatus Indici* appellatur *Hispano-Brabantus* §. 6. differt. nost. probavimus: videat itaque *D. Neny*, atque ipse judicet, quantopere illud argumentum faciat contra seipsum; & si de præscriptione hic ageretur, quam manifeste *Belgii Austriaci incolis* obstaret negligentia, siue non usus, non dicam per tempus longissimum, sed ab omni tempore ad hanc usque ætatem, quoniam nunquam usi sunt, neque uti potuerunt, eo quod dicta prohibitio illis semper obstitit.

§. V. Sed non agit *Societas Fœderati Belgii jure summo*, nec ex præscriptionis causa, nec ex ipsis prohibitoriis Principum legibus, jus suum metitur, nisi quatenus hac longissimi temporis usu confirmata tandem *Pace Monasteriensi* in vim obligationis transierunt. Agit itaque ex pacto, agit ex *Fœdere Pacis cum Belgii Hisp.* quondam Principe factò, quod perpetuum est, nec pace cum *Hispanis & Lusitanis*, ac *Fœderato Belgio* facta evanuit, ut vult *D. Neny* §. 2. *Refut. Vers. Mais comme tous*: sed adhuc viget atque subsistit, non solum cum *Rege Hisp.* sed etiam cum *Cæsarea sua Majestate*, quatenus *C. & C. S. M.* tanquam hæres & successor postremo defuncti *Belgii Principis Caroli II.* illud ipsum *fœdus Antverpia* firmavit; quod infra, cum debita tamen erga *Summum Principem* reverentia, latius demonstrare conabimur.

Interea questio huc iterum recidit, an scilicet *Hispaniarum Rex* una tantum qualitate, tanquam *Hispaniæ Rex*, an etiam altera, nempe ut *Burgundiæ Dux* siue *Dux Brabantiæ & Comes Flandriæ* *Fœdus Monasteriense* fecerit? adeoque an *Belgii Hisp. incolæ* clausula finali art. 5. ejusdem *Fœderis*, quatenus illic agitur de prohibita navigationis extensione, una cum *Hispanis* comprehendantur, nec ne? Nos Regem eadem qualitate, qua bellum in *Belgio* gessit, pro omnibus suis subditis, hoc est non solum tanquam *Hispaniarum Regem*, sed etiam tanquam *Burgundiæ Ducem*, illud fœdus fecisse, adeoque *Belgii Hispanici incolæ*, una cum *Hispanis dicto-articulo 5. comprehendisse*, antea asseruimus; & hoc probavimus ex natura & circumstantiis rei in conventionem deducta; qua talis est, ut ab his omnibus præstari potuerit, & debuerit. Probavimus etiam ex denominatione a potiori parte, nempe *Hispanorum & Castellanorum*, qua sequiorem partem comprehendit; probavimus ex constanti usque ad hæc tempora usu, ex *Pacis instrumentis*, ex *Fœderis Proœmio*, *Legatorum mandato*, & *ratihabitionis actu*; qua omnia Rex fecit, non solum tanquam *Hisp. Rex*, sed etiam tanquam *Burgundiæ Dux* pro se, posteris, subditis & successoribus omnium Regnorum, Dominiorum & Ditionum suarum; quatenus inter illos aliqui esse possent, qui *Fœderato Belgio effectum hujus Fœderis* adimerent; dum noluit, ut unquam quicquam in contrarium attentaretur. vide actum ratihab. & art. 76. *Pacis Monast.* Nam si principes, qui diversa Regna

only by their own Princes, but also, after the Treaty of Munster, by our Dutch East-India Company, as I have proved § 6. of my former *Dissertat.* by the Example of *Bastian Brower* called in the Letters of the President & Council of the Indies a *Spanish Brabander*. Mr. *Neny* may now see how much this argument makes against him; & if the question were to be decided by prescription, how the Inhabitants of the Austrian Netherlands must lose their cause, because of their abstaining from, or not using that trade, not only in a very long time, but in all times till this present; as indeed they never did or could do it being always restrained by the aforesaid prohibitions.

V. BUT the Dutch East-India Comp. does not insist on the rigour of the Law, nor found its right barely on prescriptions, or on the Prohibitions of Princes; but on such as have been submitted to & confirmed by a very long use, & at last have obtained the force of the strongest obligation by the Peace of Munster. They go upon a Covenant; on a Treaty of Peace made with the Sovereign of the Spanish Netherlands, which is perpetual; & far from being extinct as Mr. *Neny* would have it, it is yet in full force, not only with the King of Spain, but also with the Emperor, inasmuch as His Imp. & Cath. Majesty, as Heir & Successor to the last deceased Sovereign of the Spanish Netherlands *Charles II.* renewed it by a new Treaty at Antwerp, as we shall, with due respect to his said Majesty, more fully prove hereafter.

But a question is made, whether the King of Spain made the Treaty of Munster, only in one quality as K. of Spain, or in another also as Duke of Burgundy & of Brabant & Earl of Flanders; and consequently if the inhabitants of the Spanish Netherlands be comprehended with the Spaniards in the last clause of the fifth Article of that Treaty about the prohibition of extending their Navigation. I have already asserted that that King made the aforesaid Treaty for all his Subjects, in the same quality that he made war in the Low Countries, that is not as King of Spain only but also as Duke of Burgundy; & so comprehended those of the Spanish Netherlands as well as the Spaniards in the said V. Article. This I proved by the nature & circumstances of the thing agreed on, which is such as might & ought to be performed by all. I proved it also by the denomination taken from the greater part, viz *Spaniards* or *Castillians*. I proved it also by constant use to these times; by the Instrument of the Treaty, & by the preamble; by the Instructions of the Ambassadors, & by the Act of Ratification: In all which that King acted not only as King of Spain but also as Duke of Burgundy, for himself & posterity, for his Subjects & Successors in all his Kingdoms, Dominions & States, in so far as there might be any of them that might refuse the effect of this Treaty to the United Provinces; for he would hinder that any thing should ever happen contrary to this. (see the Act of Ratification, & the 76 Art. of the Treaty) For if Princes who have several Kingdoms & Dominions, made use of such deno-



& Dominia possident, tali locutione a potiori parte, quæ frequens est, & in fœderibus sæpe occurrit, ad excludendos alios uteremur, in casibus, qui natura sua tales sunt, ut nisi id quod promissum est, ab omnibus, qui contra facere possent, æque præstetur, tota promissio atque conventio statim corruat & stipulanti inutilis fiat, variae absurditates sequerentur, quas bonæ fidei Fœderum adversari Dissert. nostr. §. 13. demonstravimus: atque illic etiam docuimus, in causis istiusmodi verborum obscuritatem veritati rei, de qua actum est, cedere oportere, ne alias ridicula fiat conventio. Nam si P. P. D D. Ordines expressis verbis stipulati essent, ne Hispanis navigationem ad limites Privilegii nostri ulterius extendere liceret, quam tunc temporis navigare erant assueti, & contra consentirent, ut Brabantis aut aliis Regis subditis id novo exemplo facere liceret, ridenda esset stipulatio; quoniam Brabanti, si ad hanc navigationem admittantur, plus nocere queant, quam Hispani. Quapropter necessario corruit ista distinctio, quam D. Neny crebro facit inter ea, quæ Philippus IV. fecit tanquam Hispaniarum Rex, & ea quæ fecit, tanquam Burgundiæ Dux; quum certum sit illum eadem qualitate, qua Bellum gessit, etiam Fœdus hoc fecisse, & Hispaniarum Reges non minori potestate Belgis, quam Hispanis præfuisse; modo nihil facerem, quod Privilegiis Belgarum adversaretur, quibus jus Navigationis & Commercii ad Indias nunquam annumeratum est.

§. VI. Si quis tamen subtili disputandi ratione præcise roget, quo nomine aut qualitate memorati Hispaniarum Reges, Belgii incolas, suos subditos à commerciis Indiarum prohibuerint? respondendum videtur, illos hoc fecisse tanquam Burgundiæ Duces, & Belgii Principes in gratiam Hispanorum. Nam quum Philippus II. Provincias Archiducibus cessit, certum est illum hoc fecisse tanquam Burgundiæ Ducem, & hac qualitate etiam legem actui Cessionis dixisse, ne commercia ad Indias exercerent. Atqui, inquit D. Neny, Burgundiæ Duces non tam absolutam in Belgas potestatem habuerunt, ut illos Privilegiis suis, & libertate naturali, suisque legibus fundamentalibus orbare potuerint. Refut. suæ §. 1. Sed pace Viri Clarissimi dixerim, jactat Privilegium & libertatem, quam nunquam habuerunt, & quæ destituti erant, antequam Hispaniæ Regnum & Burgundiæ Ducatus ad unum Principem devenirent. Nam quis Regum Hisp. à Ferdinando V. sive Catholico, quo regnante Christophorus Columbus anno 1492. regiones Americanas detexit, usque ad Philippum IV. qui Fœdus Monasteriense fecit, illis unquam dedit Privilegium aut libertatem navigandi ad Indias? quæ sequenti anno 1493. quum lis orta esset de hac navigatione inter Hispanos & Lusitanos, Constitutione Alexandri VI. P. R. statim ita divisæ sunt, ut pars Orientalis cederet Lusitanis, pars Occidentalis Hispanis; neque his supra Promontorium Bonæ Spei Orientem versus navigare liceret. Quamobrem illos iter ab

minations as are commonly taken from the greater part & frequently used in Treaties, to exclude others, in cases of such a nature that unless the promise be kept by all that might act contrary to it, the whole convention would come to nothing & be of no effect, there would follow several absurdities, which I have shown in my former Dissertation would be contrary to the sacred faith of Treatys. I also made out there that in such cases the obscurity of the terms must give way to the truth or nature of the things in question, otherwise the convention would be ridiculous & useless. For example, if the States, stipulating in express terms that the Spaniards should not extend their navigation further within the limits of our Privilege than what they were accustomed to do at that time, had allowed that the Brabanders or others of the King's Subjects might undertake such Navigations; this would be a ridiculous stipulation, for the Brabanders being admitted to this Navigation could do us much more prejudice than the Spaniards. Therefore that distinction must fall to the ground which Mr. *Nen* so often makes, between what Phillip IV. did as King of Spain, & what he did as Duke of Burgundy: for 'tis certain that he made the Treaty in the same quality that he waged war with us; & that the Kings of Spain were as much Sovereigns of the Spanish Netherlands as of Spain; especially if they did not violate the Privileges of the inhabitants, among which the Right of Navigation & trade to the Indies was never reckoned.

VI. But if any one for the sake of cavilling were to ask, in what right or quality the aforesaid Kings of Spain prohibited their Subjects in the Netherlands from trading to the Indies? it may be answered that they did it as Dukes of Burgundy, and Sovereigns of the Netherlands to favour the Spaniards. For when Philip II. yielded those provinces to the Archduke and Dutchess, 'tis certain he did it as Duke of Burgundy, and in the same Right made that restriction in the Act of cession, prohibiting their commerce to the Indies. But, says Mr. *Nen*, the Duke of Burgundy had not so absolute a power over the Netherlands, as to deprive the inhabitants of their privileges, their natural liberty, and their fundamental laws. But with that Gentleman's leave I must say he boasts of a privilege and liberty which they never had, and were destitute of, even before the Kingdom of Spain and the Dukedom of Burgundy were united under one Prince. For what King of Spain, from Ferdinand V. or Catholick, (in whose reign Chr. Columbus, anno 1492. discovered the American coasts) to Philip IV. who made the Treaty of Munster, ever gave them privilege or liberty of trading to the Indies? which Indies, the following year 1493. (when the contest about the Commerce to those parts began betwixt the Spaniards and Portugese) were thus divided by a Constitution of Alexander VI. then Pope. The Eastern parts to the Portugese, and the Western to the Spaniards; the se last being to sail no farther east than the Cape of good hope; for which reason they sought a passage from the west by the straits

Occidente per Fretum Magellanicum affectasse, & utrumque Regem propria & Pontificis auctoritate nixum, exinde omnes Europæ populos, tam subditos sibi, quam non subditos (exceptis solis Lusitanis & Castellanis, qui in detegendo Novo Orbe præcipuam operam navarant) ab aditu Indiarum severis legibus prohibuisse alibi monuimus. Successit Ferdinando Philippus I. qui primus fuit Hisp. Rex & Belgii Princeps; huic Carolus V. illi Philippus II. qui anno 1598 utraque qualitate, & tanquam Rex in gratiam Hispanorum, & tanquam Princeps Belgii, per notissimum Cessionis Actum, hac navigatione Belgis interdixit, quos sequutus est Philippus III. qui solis Foederatis Provinciis anno 1609. per Foedus Induciarum navigationem ad Indiarum loca libera concessit; manentibus reliquis Provinciis sub antiquis tam Hispaniarum, quam Belgii legibus, ne ad Indiarum Regiones commerciorum causa navigare ipsis liceret. Quid fecit igitur Philippus IV. quum anno 1648. Indias Orientales, quas Societas nostra jam tum occupaverat, nobis cecisset, quo his incolis nocuit? aut quid ademitt illis, quod Reges ante ipsum non ademerant? Privatio præsupponit habitum; at qui non habuit, privatus dici non potest. Non reddidit igitur memoratus Rex illos deterioris conditionis, quam antea fuerant: sicut ab altera parte etiam certum est, Serenissimum Angliæ Regem, & P. P. D. D. Ordines, per Foedus anni 1701. quod Magnam Confoederationem vocant, & per subsequentem Tractatum de Barriere, illos non melioris conditionis facere voluisse ad tam insigne detrimentum subditorum suorum. Sed urget Clarissimus Auctor, illud interdictum Hispan. Regum Belgii incolis tantum commune fuisse cum cæteris Europæ populis, nempe Anglis, Gallis & similibus. Quasi vero Reges, qui simul erant Belgii Principes, non plus imperii habuissent in Belgas suos subditos, quam in Anglos & Gallos ipsi non subditos, quos ipso quidem facto ab Indiis arcere, jure prohibere non poterant! Quo etiam pertinent illa, quæ Philippus II. moriens filio & Successori suo Philippo III. mandavit, apud E. a Meteren lib. 20. fol. 418. cum dixit Quantum ad Commercia Indiarum Orientalium & Occidentalium attinet, in illis consistit robur Imperii Hispanici, quo refrenantur Itali. At Gallos & Anglos ab his Commerciis prohibere non poteris, quoniam nimis sunt potentes; habent etiam magnam copiam sociorum nauticorum. Oceanus spatiosus est; Mercatores illorum sunt divites, milites rapaces, & subditi nimium fideles. At Belgas ipse prohibui pro te &c.

§ VII. Verum ut quæstionem hanc, quæ distinctionibus istiusmodi magis magisque intricata redditur, ad pauca redigamus, alterutrum necessario statuendum est



Straits of Magellan; and these Princes relying on their own and the Popes authority, together (as we have already remarked) forbid by severe laws all access to the Indies, not only to their own Subjects, but even to all the People of Europe excepting only the Portuguese and the Castilians, who had the principle share in the discovery of those new lands. Philip I. succeeded Ferdinand, and was the first King of Spain who was Prince of the Netherlands. Charles V. succeeded Philip, and was himself succeeded by Philip II. who anno 1598 in a double quality as King of Spain and Soverain of the Netherlands, made that famous Act of Cession wherein he excluded the inhabitants of the said Netherlands from all such Commerce and navigation. After him came Philip III. who by the Truce in 1609 granted to the United Provinces only the liberty of trading to all free parts of the Indies, the rest of the Provinces remaining still under the old laws as well of Spain as of the Netherlands, by which they were restrained from making any voyages on account of trade to the Indies. What injury then did Philip do to those of the Spanish Netherlands, when in 1648. he yielded to the Dutch all those place of the East-Indies which they were already in possession of, any such other places as they should at any time recover from the Portuguese? What did he take away from them which the Kings before him had not already taken? The loss of privileges presupposes the being of those privileges, so that those who never had them, can never be said to have lost them. The aforesaid King then can not be said to have reduced them to a worse state than they were in before. On the other hand also 'tis certain that his British Majesty, and our States, by the Treaty made in 1701 called the Grand Alliance, and afterwards by the Barrier Treaty, would by no means endeavour to better their condition as to that point, with a very manifest detriment to their own Subjects. But our Author urges, that the prohibition of Spain excluded all the People of Europe, as the English, French, &c. equally with those of the Netherlands: As if the Kings of Spain, who were at the same time Soverains of the Netherlands, had had no more right to impose a prohibition on the inhabitants of those Netherlands who were their Subjects, than they had to impose the same on the English or French who were not so, & whom they might drive away by main force, but could not exclude them by any Law. To this purpose Philip II. when he was dying said to Philip III. his Successor---, 'Tis in the Trade of the East and West-Indies that  
 „ the chief strength of the Spanish Monarchy consists, & the means of keep-  
 „ ping Italy in subjection. You will not be able to exclude the French & En-  
 „ glish from that trade because they are too powerfull, and their naval  
 „ forces too great: The Ocean is wide, their Merchants are rich, their  
 „ Soldiers bold, and their Subjects loyal. But as for the Netherlanders I have  
 „ taken care to prohibit them for you &c.

E. a Mere-  
 ten lib. 20.  
 fol. 418.

§ VII. But to bring into a narrow compass this question, which by distinctions

C

of

est, nempe, aut verum esse, quod vult D. Neny Belgii Hispanici incolas semper æquum jus cum Hispanis ad commercia Indiarum, tam Orientalium, quam Occidentalium, habuisse; aut non habuisse: medium enim non datur. Si statuamus illos cum Hispanis æquum jus semper habuisse; sequitur etiam eos clausula finali d. art. 5. una cum Hispanis inclusos esse; ne scilicet navigationes ad limites prohibitos extenderent: si ponamus illos non habuisse, quod verissimam quidem est; bona fides Foederis tunc omnino exigit, ut ratione horum subditorum, cum Rege actum & contractum sit, quæ talium; utpote quibus nullum jus ad commercia Indiarum competeat, propter leges & prohibitiones illis tunc temporis obstantes; ne alias, salvis articuli verbis, mens ejus & sententia circumveniat. Ut si, verbi gratia, Brabanti ab Ordinibus Foederati Belgii stipulati essent, ne Zeelandi prope limites Brabantinos piscarentur, & P.P. D.D. Ordines, hac promissione data, mox per Hollandos contra stipulationis istius intentionem id fieri finant; aut, quod in pacto ultro citroque obligatorio nequaquam procedit, ut scilicet incolæ Foederati Belgii exclusi essent a toto tractu occiduo & Insulis Hispanorum in India Orientali sitis; contra, vero quodcumque Hispan. Rex nobis cessisset, non alia conditione cessum esset, quam ut illud, quandocumque ipsi commodum esset, iterum eripere & sibi vindicare posset; non quidem per Hispanos, sed per alios suos subditos, nobis quanto viciniore, eo magis nocituros, tam in Indiis, quam in hisce Europæ Regionibus. Certe si hoc modo contrahendum fuisset, aut P.P. D.D. Ordines unquam divinare potuissent, affuturum aliquando tempus, quo subtili disputandi ratione ad hanc iniquitatem deveniretur; scilicet distinguendo inter qualitates Principis, & utriusque contrahentis subditos, ut tam insigne caput Foederis Monasteriensis ipsis inutile fieret; præsumendum non est, eos tam subdola conditione pacem inituros; aut ineunte hoc seculo consensuros fuisse in Confederationem Magnam, ut Belgii Provincias Cæsareæ sue Majestati restituerent, sibi que ipsis intermeivum damnum hoc modo pararent. Quapropter & causam nostram meliorem esse nemo negabit; utpote qui agimus de damno vitando; qui rogamus, ne officium nobis damnosum sit, quàm illorum, qui certant de lucro captando: qui hic agimus de retinenda possessione, quam illi novo exemplo turbant, dum Commerciorum nostrorum societatem sibi impertiri & communicari postulant, etsi ad stabilienda hæc commercia ne bilum quidem contribuerint.

§. VIII. Sed, inquit D. Neny §. 4. Refut. non ipse Hispaniarum Rex Carolus II. postremo defunctus, hæc ita intellexit. At nos contra non tantum Hispaniarum Regem, sed & Cæsaream suam Majestatem ante annos aliquot hæc ita intellexisse videri (cum debita observantia) alibi diximus: & quantum ad Hispaniarum Regem pertinet, illud probavimus per constantem usum usque ad hæc tem-

of this kind only becomes more and more intricate, one of these two things [for there is no medium] is necessarily true; either the inhabitants of the Netherlands, as Mr. *Neny* would have it, had always an equal right with the Spaniards of trading to the Indies: or they had not. If we say they had, it follows that they must be included with the Spaniards in the final clause of the V. Article, which forbids their trading beyond certain limits. If we say they had not, which is the truth of the matter, then the sacred faith necessary to Treatys requires that in contracting with the Sovereign we must be supposed to have contracted with his Subjects in that quality, & such as then had no right to trade to the Indies, because of the laws & restrictions they lay under: for otherwise by keeping to the precise words of a Treaty we should quite lose the intent of it. As, for example, if the States of Brabant & Flanders should stipulate by a Treaty with the States General that the Zeelanders should be no more allowed to fish on the Coasts of Flanders, & after this promise made, the States General should allow the Hollanders to fish there. Or, which is the same thing, & contrary to the nature of all reciprocal Contracts, that the United Provinces should be excluded from all the western Coasts & from all the Spanish Islands in the East-Indies, but on the other hand what was yielded to us by the King of Spain might be taken away when ever he pleased; not indeed by Spaniards but by others of his Subjects, who they nearer they are our neighbours the more they can doe us prejudice, as well in the Indies as here at home in Europe. Surely if the contract had been made thus, or if the States could have foreseen that there would be a time, when by a nice distinction such injustice might be done, & that by distinguishing between the different qualities of a Prince, & the different Subjects of either party, that great article of the Treaty of Munster might become of no use to them: 'Tis not to be supposed they would have made peace on such fallacious terms, or that they would have joyned at the beginning of this Century, in the Grand Alliance for recovering of the Netherlands to his Imperial Majesty, so as to bring a fatal mischief on themselves & their Subjects. Wherefor every body must judge our cause, who ask only to be no losers, & desire nothing but that our good offices may not be turned to our prejudice, juster than theirs who have no thing but gain in view; for there's great difference betwixt people who only endeavour to keep possession of their own, and others who by a new pretension demand a share of our Commerce, tho' they have contributed nothing to the establishing of it.

VIII. Mr. *Neny* pretends that even the King of Spain himself, *Charles the II* Ref. Sec. 4. last deceased, did not understand it thus. But on the other side we have already affirmed with due respect, that not only the King, of Spain but even his Imperial Majesty too seem'd some years ago to understand it thus. As to the King of Spain, we gave constant use and an inviolable observation of the Treaty even



tempora ; & intaminatam fœderis observantiam. Respectu vero Cæsareæ sue Majestatis idem præsumendum putavimus ex clausula quadam, quam commeatibus, quibusdam Belgii incolas à Cæsarea sua Majestate antehac concessis, insertam vidimus, quâ prohibentur Navigare & Commercia exercere ad illas Regiones, ubi subditis Cæsareæ suæ Majestatis secundum fœdera navigare & Commercia exercere non licet, aut, ut verba Gallica se habent : dans les endroits où il n'est pas permis, suivant les Traités, aux sujets de S. M. I. &c. de commercer. Quæ clausula nobis ad Fœdus Monasteriense respicere visa est, quoniam nullum aliud Fœdus, quod hujusmodi verba sano sensu referri possint, usquam extat. Et primum quidem, nempe tales commeatus à Cæsarea & Cath. Majestate reverâ dados esse, non difficitur D. Neny Refut. suæ § ult. sed consequentiam quam inde deducimus, prædicta nimirum verba ad Fœdus Monasteriense respicere, omnino negat, dum putat hanc clausulam supervacuum esse, & in casu, quo scripta est, nihil aliud efficere, quàm quod clausulis istiusmodi, quæ Commeatibus vulgo inferi solent, Navarchi, ut ait, prohibentur colludere cum Piratis, aut cum hostibus Principis illius, qui talem Commeatum concessit. Atque ita Commerçii verbum ad Piratas, Fœderis nomen ad Hostes refert ; & quando, si Deus placet, cum Jurisconsultis loquitur, assermat, Principis verba in casu quo scripta sunt, nihil operari, & sine effectu accipiendâ esse. Sed quoniam nostrum non est, tantas componere lites, missa hac faciemus. Quid enim senserit Augustissimus Imperator, aut quid omnino non senserit, ipsa illa Majestas optime noverit. Nobis ex factis Summorum Principum aliquid conjectare licet, at de internis cogitationibus judicare nos non oportet.

Nec magis etiam nostra referre putamus, quid senserit Glor. Mem. Carolus II. Hisp. Rex, quem vidimus quid fecerit, & appareat hunc Principem Fœdus Monasteriense religiosissime observasse : quamquam & hoc negare conatur D. Neny § 2. Refut. suæ, ubi loquitur de quodam Privilegio, quod alte memoratus Rex, anno 1698. Belgii incolis concessisset ad navigandum ultra Europa limites ad Indiarum tam Orientalium, quàm Occidentalium oras, quod tunc temporis typis publice editum, & omnibus etiam Directoribus utriusque Societatis Fœderati Belgii innovisse asserit ; quos tunc non objecisse, ait, Fœdus aliquod, quod huic Privilegio obstarer, sed unice P. P. D. D. Ordines rogasse, ut lex conderetur, quâ Belgii Fœderati incolæ prohiberentur hujus nova Societatis consortes & participes esse. Unde concludit, quod si Hisp. Rex scivisset sibi fœdus aliquod ob stare ; aut si P. P. D. D. Ordines simile quid cogitassent, nec ipse Rex ejusmodi Privilegium concessisset, nec P. P. D. D. Ordines contenti fuissent nudo Edicto, ne subditi sui hujus nova Privilegiata Societatis participes fierent ; sed Regem, ut oportet, solenni ritu certiore fecissent, tale Privilegium cum fœdere non convenire. Quod quum factum non sit, inde probare conatur, Regem, & P. P. D. D. Ordines tunc temporis non existimasse illud Privilegium fœderi Monasteriensi adversari. Verum quid de hac re statuendum sit, dictum nobis difficile est ; quandoquidem nemo nostrum tale Novum Regis Hispaniarum Privilegium unquam vidit, vel antehac fando de eo

to this day as a sufficient proof: And we thought we might presume the same of his Imperial Majesty from a certain clause in Passports granted by his Majesty to some people in the Netherlands, where they are forbid to exercise any trade or Commerce to those parts which are prohibited by the Treaties. Or as it is in the French, *dans les endroits où il n'est pas permis, suivant les Traités, aux Sujets de S. M. I.* and this clause seemed to us to relate to the Treaty of Munster: for we don't know of any other Treaty which these words can possibly be apply'd to. That such Passports have been granted by his Imperial Majesty Mr. Neny does not deny, but our consequence that the foremen-<sup>Set. Ult.</sup>  
tion'd words must relate to the Treaty of Munster he will by no means allow, and thinks that clause to be superfluous and of very little signification in the place where it stands, and only such as is generally inserted in the like Passports to hinder Masters of Ships from holding any correspondence with Pyrates or with the enemies of those Princes who have granted such Passports. So that he makes the word *commerce* relate to Pyrates and the word *Treaty* to Enemys. And when forsooth he takes upon him to talk like a Lawyer, he affirms that the words of the Emperour in this very case as they are here are of no manner of effect and signifie just nothing at all. But because tis not for us to determine matters of this nature we'll drop it here. His Imperial Majesty best knows what he meant or meant not on this occasion: Tis not for us to judge of the meaning of great Princes, we are to take our measures from their Actions only.

Neither is it our business to seek after the meaning of the said Charles II. King of Spain, since there appeared in all his actions a strict observance of the Treaty of Munster: altho' Mr. Neny would deny this, where he speaks<sup>Ref. S. 2.</sup> of a certain Privilege which that King granted in 1698 to the Spanish Netherlands, allowing them to Navigate both to the East and West-Indies; which Privilege he affirms to have been printed and publish'd at that time, and to have been known to the Directors of both the Companies of the United Provinces; which Companies notwithstanding (says he) never alledg'd any Treaty which oppos'd the said privilege; neither did they demand any thing more of the States, but that a Law might be made to prohibit the Dutch from being Members or sharers in this new Company: from which he concludes that if the King of Spain had known of any Treaty which restrained him; or the States thought any thing like it; the King would not have granted such a Privilege, nor would the States have been contented with a bare Edict, only restraining their Subjects, from being Sharers in that new privileg'd Company; but would in a publick manner have remonstrated to the King that to grant such a privilege was not agreeable to the Treaty: from the not doing of which our Author would infer, that neither the King nor the States at that time, thought the granting of such a Privilege to be contrary to the Treaty of Munster. What to judge of this matter we cannot tell, for as much as none of us ever saw any such new Privilege of the King of Spain, nor till now ever heard

quicquam audivit : in Actis etiam D. D. Ordinum & Societatis Indiarum Orientalium ne verbum quidem de eo reperitur. Et sicut certum est alio memoratos D. D. Ordines de re quam ignorabant, Edictum facere non potuisse, ita ex proemio ejusdem edicti, quod hic adducit D. Neny, evidentissime apparet, illud occasione hujusmodi Privilegii datum non esse, sed occasione renovati Privilegii Societatis Indiarum Orientalium, & prorogationis ejusdem ad Annum 1740. quando leges & Statuta ad hanc Societatem pertinentia, more antiquo in compendium redigi & promulgari solent, quod tunc iterum factum esse, ipsissima edicti verba, qua infra exhibebimus certo, certius denotant.\*

Non diffiteor tamen, me dum hac scriberem, copiam talis Privilegii, de quo loqui videtur D. Neny, ab Amico ex Brabantia consecutum esse. Sed quum hoc, quod mihi videre nunc contigit, ab Rege subscriptum non sit, nec datum Madriti, sed Bruxellis, magis videtur illud a Regio Senatu Bruxellis, quam ab ipso Rege in Hispania datum esse: Saltem illud constat, prædictum Privilegium, qualecunque sit, executioni nunquam mandatum esse. Unde præsumendum est, illud semper in tenebris latuisse, ob defectum vel vitium aliquod, quo laboravit, vel ob aliam quancunque causam, cujus rationem nos non tam facile reddere possumus, quam ex iis, qua Articulo primo ejusdem Privilegii leguntur, evidenter demonstrare, Auctores illius non existimasse incolas Belgii Hisp. ratione commerciorum ad Indias, fœderis Monasteriensis plane immunes esse; adeoque illud fœdus non ita flocci fecisse, ut nunc facit D. Neny, qui ne ipsos quidem Hispanos clausula finali Art. V. amplius teneri contendit; sed eosdem omnino statuisse, Belgii Hispanici incolas hac in parte una cum Hispanis pari jure esse habendos; quoniam dicto art. illis nihil aliud concedunt, quam ut navigare liceret & commercia exercere, ubicunque ipsis secundum fœdera inter Hisp. Regem & alios Europæ populos, ac speciatim quidem inter prædictum Regem & Provincias Unidas, navigare & commercia exercere liceret; sic enim verba se habent :

Que ladite Compagnie s'établira sous le titre & nom de Compagnie Royale des Pais-Bas, negotiant aux places & lieux libres des Indes Orientales & de la Guinée, où il leur est permis de naviger & negocier, sans contrevenir aux Traitez de paix, que nous avons avec la France, l'Angleterre, les Provinces-Unies, & autres Princes & Etats de l'Europe.

Agnoscent igitur Fœdera, quacunque Rex habebat cum aliis Gentibus, & speciatim cum Unitis Provinciis, quoad navigationem & commercia ad Indias, iisque Belgii incolas, non minus quam Hispanos obligari statuunt. Nam alias fœderum mentionem non fecissent, sed permisissent prædictis incolis longe lateque navigare, quocunque liberet; quippe quibus nulla lex vel fœdus obstabat; at contra illos limitant & restringunt ad loca libera, id est talia, qua secundum Fœdera cum aliis Europæis populis

\* Si quis pleniore super hac re demonstratione indiget, adeat ipsam Resolutionem, quod vocant. PP. DD. Ordin. Gener. quam, infra exhibemus in Appendice, Nº. IH.



of it; neither is there the least mention made of it in the Journals of the States, or of the East-India Company. And as 'tis certain that the said States could not make an Edict upon what they knew nothing of, so it appears evidently from the Preamble of that very Edict here mention'd by Mr. Neny, that it was not made upon the account of any such Privilege, but on occasion of renewing the Privilege of our East-India Company, and prolonging of it to the year 1740. at which time the Laws and Statutes made in favour of the said Company, are usually epitomis'd and publish'd; and that this was then done the very words of the Edict which we shall add at the end, infallibly demonstrate.

But while I am writing this I have at last got a copy of such a Privilege as Mr. Neny seems to speak of, which is sent me from a friend in Brabant: But as it is neither signed by the King, nor dated at Madrid, but at Brussels, it seems very apparent that this Privilege was rather given by the Council at Brussels, than by the King of Spain: but however this is certain, that the said Privilege was never put in execution: and it is to be presumed, that it had never lain so long in the dark, unless there had been some fault or defect in it, or for some other particular reasons, which I shall not take upon me to explain: but I can safely undertake to prove from the I. Art. of this Privilege, that the Authors of it, whoever they were, did not think the Spanish Netherlands to be entirely free with relation to the East-India Trade from any restraint by the Treaty of Munster, and by consequence that they did not make so light of that Treaty, as Mr. Neny would seem to do at present, who contends that even the Spaniards themselves are no longer bound by the last clause of the V Art. But the aforesaid Authors have plainly decided that the Spanish Netherlands in this case are upon the same footing with the Spaniards; for in the said Article there is no other Concession made them than to navigate and trade, wherever it might be allowed by the Treatys made betwixt the King of Spain and the other Nations of Europe, and particularly betwixt the said King and the United Provinces. The words are thus: *That the said Company shall be established under the name and title of the Royal Company of the Netherlands; and shall trade to such places or parts of the East-Indies or of Guinea where they may lawfully navigate and trade, without violating the Treaties of Peace, made by us with France, England, the United Provinces, or other Princes or States of Europe.*

Thus they acknowledge the Treaties made by the King with the other Nations of Europe, and particularly with the United Provinces, with relation to the Navigation and trade of the Indies, and that the Netherlands are no less bound by them, than the Spaniards themselves. For otherwise they had made no mention of a Treaty, but had permitted the said Netherlands to trade every-where where they pleased, as people not restrained by any Law or Treaty whatsoever; but instead of that they limit and restrain them to such places as are free,

that

\* For a further proof of this we have also added the Resolution of the States General on this Matter.

Append.  
No. III.

Append.  
No. II.

pulis libera sunt; quaque subditis Regis, salvis fœderibus, commerciorum causa adire licet. Ut jam porro restet inquirere, quanam hæc loca sint in Indiis Orientalibus, quæ respectu incolarum Belgii Austraiici pro liberis haberi possint.

## CAP. II.

§. 1. Pro locis liberis haberi vult D. Neny omnia loca à Societate Indiarum Orientalium nondum occupata, quæ sui juris sunt, & commercia cuius gentium concedere possunt. At nos in hoc casu pro locis liberis habenda contendimus, quæ Regi Hispania subditis, salvo fœdere, adire licet; ut jam quæstio proprie sit, an prædicti subditi per fœdus Monasteriense tantummodo exclusi sint à locis Societatis Fœderati Belgii propriis, an vero à toto tractu maris, quorsum Hispanos navigationem non extensuros clausulâ fin. dicti art. 5. Rex promissit.

Diximus antea, Dissert. nostræ §. 6. & 10. Hispanis secundum sententiam Pontificis Maximi, (tanquam arbitri inter illos & Lusitanos) navigare non licuisse ultra Promontorium Bona Spei, nec ab Occidente ultra Philippinas Insulas, v. gr. ad Asiæ & Chinesium oras, ad tractum Cormandelicum, Bengalensem, Mare Rubrum, quæque his comprehenduntur. Sed aliud est, abstinere debere à certa parte maris, aliud à singulis locis ad alterum pertinentibus; nam quod meum est, eo ut meo uti possim, & jure dominii alios inde arcere, ad quod habendum & retinendum nec pacto, nec gratia aut consensu alicujus indigeo. Verum quandoquidem commercium Societatis Fœd. Belgii in Indiis Orientalibus tale est, ut minimum consistat in locis isti Societati propriis; quippe quæ præcipue servantur ad custodienda alia loca, aut tanquam horrea, in quibus merces per diffitas Indiarum oras collecta reponuntur; quo pacto Batavia dici potest commune emporium totius India Belgica, non quia per se merces multas suppeditat, aut lucrum aliquod adfert, sed quia est quasi commune horreum & repositoryum, quo merces undique cœmita coacervantur, & unde classibus quotannis in patriam deportantur; sic Macasser, Timor, Ternate, & alia loca, licet nullum commercium ibi detur, multo tamen milite & maximis impensis servantur ad custodiendas insulas aromatum. Quamobrem tali pacto cum Rege Hispaniarum percusso omnino opus erat, non ut Rex Privilegium nostrum confirmaret, sicut arguit D. Neny §. 2. Refut. suæ, quod, confirmata Republica, confirmatione non indigebat; sed ut Hispanis ad illam partem maris, quam Societas Fœderati Belgii commercii suis jam occu-

that is such as are allowed by the Treaties made betwixt the King of Spain and the other Nations of Europe, and which they, as his Subjects, observing those Treatys might freely trade to. So that it now remains only to be enquir'd, what places in the East-Indies with respect to the Austrian Netherlanders are to be accounted free.

## S E C T. I I.

I. Mr. *Neny* is for having all those places reckon'd free which are not now in the actual possession of the East-India Company, or which have no dependance on any other, and can trade with any people they please. But we, in this case, maintain, that there are no other places to be reckoned free, but such, as the Subjects of the King of Spain are allowed by the aforesaid Treaty, to trade to. So that now the question properly is. Whether the said Subjects, by the Treaty of Munster, are only excluded from certain places belonging to the Company of the United Provinces, or from that whole tract of Sea, to which the King has promis'd by the last clause of the said 5. Art. to prohibit the Spaniards from navigating.

I have already said in my former Dissertation, that the Spaniards by the Sentence of the Pope (as Arbiter between them and the Portugeze) were not allow'd to navigate beyond the Cape of good hope, nor from the west beyond the Philippine Islands, that is to the Coasts of Asia, or of China, Corman-del or Bengal, to the Red sea, or to whatever places were comprehended under these. But tis one thing to be oblig'd to abstain from a certain part of the Sea, and another, only not to be allow'd to trade to particular places belonging to another. For what ever is already mine, I can make use of as my own, and by right of Sovereignty keep it from all others; & to the having and holding of which I neither want the agreement, favour, or consent of any one. But the Commerce of the Company of the United Provinces, in the East-Indies is such, that it consists very little in the places that are properly their own, which are only kept as guards of other places, or as Storehouses for the Wares gather'd from the different Coasts of the Indies. Thus Batavia may be said to be the Common Mart of all the Dutch Indies, not for any considerable profit or merchandise which it affords itself, but because it serves by way of general Warehouse & repository, where the goods bought up on all sides, are gathered together, and ship'd off every year for Holland. So Macasser, Timor, Ternate, and other places, which yield nothing for Commerce themselves, are yet kept with many Soldiers and much charge to guard the spice Islands. For which reason 'twas necessary that such a Treaty should be made with the King of Spain; not that he should confirm our Privilege, as Mr. *Neny* would insinuate (for the Republick being once well settl'd, that wanted no confirmation) but that the Spaniards might not be allow'd to incroach upon those places where the Dutch

D

had

Sec. VI. &  
X.

Ref. §. 2.



occupaverat, navigare liceret, ultra quam tunc temporis propter supra memoratam Pontificis Maximi sententiam navigare erant soliti. Sunt enim commercia Societatis nostra multorum commerciorum quasi una compages, sicut non male hac descripsit S. Puffendorf, Introd. ad Historiam Europ. cap. 6. licet huic Auctori omnia tam accurate noscere & definire non contigerit, quam res quidem exigebat. Societas, inquit, Indiae Orientalis maxime opes Reip. & commercia ingentibus accessionibus auxit: ea quippe oram illam longe lateque patentem, & opibus florentissimam, à Bafora, ubi Tigris fluvius in Sinum Persicum evolvitur, usque ad extremas Japoniae oras porrectam, commerciis frequentat: foederibus cum multis Orientis Regibus juncta, & de monopoliiis pactiōem cum haud paucis eorum fecit: multa etiam loca munita tenet: Principem inter ea locum obtinet Batavia, in Java majore insula posita. Qui ibi degit, supremus Gubernator, seu Imperator, Regia fere pompa conspicuus, reliquis etiam Indiae Provinciis praest. Eorum locorum summum imperium penes Societatem est. Inter ea eminent Insulae Moluccae & Banda, Amboina, Malacca, ora Insulae Ceylon, Paliacatta, Musulipatnam, Nagapatnam (ea regio in littore Coromandelico sita est) Cochinum, Canaor & Cranganor in littore Malabarico, aliaque.

Statuit igitur Vir Doctissimus, quod etiam rei veritate nititur, commercia hujus Societatis non consistere in locis propriis; sed praecipue in Commerciorum extensione quadam perdiffusas Indiarum regiones intra limites Privilegii sui, quas stationibus, emporiis & tabernis instruxit, castellis ac fortalitiis munivit, coloniis ornavit, contractibus cum Indicis Principibus commerciorum causa sibi devinxit, & maximis sumptibus mercaturae aptas fecit; ut si à locis propriis demantur commercia, quae ad alias regiones & loca libera institui solent, loca ista non solum Societati nostrae plane infructuosa & inutilia fierent, sed praeterea tam onerosa, ut relinquere ea, quam retinere, satius esset.

§. II. Atque hinc est, quod Directores Societatis Indiae Orientalis, cum tempore Pacis Monasteriensis a PP. DD. Ordinibus consularentur, quo potissimum pacto, ratione commerciorum Indiarum Orientalium cum Hispanis agendum esset, non suaserint, ut Hispani se tantummodo à locis Societati nostrae propriis abstinere, sed ne navigationes suas ulterius, quam tunc navigare erant assueti, et eundem nt; id est, ut abstinere a toto tractu maris, & ab omnibus locis ac regionibus in eo sitis, occupatis aut occupandis, nobis an aliis Principibus, aut etiam Lusitanis subiectis, sine discrimine; contra vero Societas nostra abstinere tantum a locis Hispanorum, quae per pauca illi, & praeter Manillas in India Orientali fere nulla tunc possidebant; adeo ut obligatio clausulae finalis d. art. 5. Pacis Monasteriensis, non sit reciproca, ut nempe Hispani ita abstinere a locis nostris, uti nos vicissim a locis Hispanorum; sed ut nos abstinere a locis Hispanorum propriis, hi vero

had already settled Commerce, nor to navigate beyond the limits assigned them by the foremention'd decision of the Pope. For the trade of our Company is as it were a Chain of different trades link'd together: As it is not ill describ'd by Puffendorf; altho' his notions in several things are not so exact as might be. The East-India Company, says he, has very much encreas'd the Riches and Commerce of the Republic, for its traffic is extended over all that large and wealthy Coast, from Bassora where the Tigris empties it self into the Persian Gulph, even to the utmost borders of Japan: It has made leagues with many Eastern Princes, and contracted with several of them for monopolising their commerce. It has many Fortresses with Garrisons there, the principal amongst which is Batavia situated upon the Island Java. He who is Governor General there has an attendance almost like a King, and has also the command of all the other Indian Provinces; but the Supreme government of all is in the hands of the Company. Among the other places the chief are the Islands of Molucca & Banda, Amboyna, Malacca, the Coasts of Ceylon, Paliacatta, Musulipatnam, Nagapatnam, which lies on the Coast of Cormandel, Cochin, Canaor & Cranganor, upon the Coast of Malabar, &c.

Innod. ad  
Hist. Eu-  
rop. Cap 6.

This Author then asserts, ( which is certainly matter of fact ) that the Trade of our Company does not consist in the places they are in possession of, but in a certain extended Commerce, thro' all the different countrys within the bounds of their Privilege, in which places they have made Havens, established Factories, and places of resort, built Castles and Fortresses, planted Colonies, made Treatys with the Indian Princes on account of trade, and with extream cost and charge have adapted thing to their Commerce. So that if the places which we call our own should be depriv'd of their Commerce with those places, they would become not only altogether useless and unprofitable to the Company, but even so burdensome, that 'twould be much better to quit than to hold them.

II. And tis upon this account that the Directors of the East-India Company, at the time of the Treaty of Munster, when they were consulted by the States as to what might be necessary to stipulate with Spain in relation to the East-India trade, did not require that the Spaniards might only abstain from those places which properly belong'd to their Company, but that they should also be restrain'd from navigating beyond their accustomed limits; that they should be excluded from all that tract of Sea, and all the Countries in it, which we were then in possession of trading to, or might be so afterwards, whether then subject to us, or to other Princes, without any distinction; or even to the Portuguese themselves: On the other hand that our Company should only abstain from the Places in the possession of the Spaniards, which places were then very few, or almost none at all, in the East-Indies, except the Manilhas. So that the obligation in the last clause of the said, Art. of this Treaty of Munster is not in such manner reciprocal, as if the Spaniards were only to abstain from our places, as we were to abstain from theirs; but that we should abstain from the places

navigationes suas ulterius nunquam extenderent. Ceduntur enim a Rege Hisp. Societati Belgii Fœder. non tantum oppida, fortalitia, castella & agri, quos tunc possidebant; sed etiam ea, quæ non possidebant, quæque in posterum illeſo fœdere erant acquisituri, cum commerciis ad ea spectantibus. At, ne quis dubitet, an ista Hispanis interdicta navigationis extensio etiam referri debeat ad ejusmodi loca, quæ sui juris sunt, quæque commercia aliis quibuscumque gentibus concedere possunt; nec non ad Indias Lusitanorum; ne scilicet Hispani Lusitanos, tunc temporis Reip. nostræ, & illorum hostes, in Indiis armis persequendo, limites nostros invaderent, ac commercia nostra deteriora redderent. Videantur, quæſo; Consultationes prædictorum DD. Directorum, quas una cum responſo Legatorum Hisp. Regis exhibui Dissert. nostr. §. 11. ubi apparet de unaquaque re separatim diversis articulis actum esse; & quidem articulo primo a DD. Directoribus rogatos esse PP. DD. Ordines, ut curarent, ne Hispani navigationes suas commercii causa in Indiis Orientalibus ulterius extenderent; altero ut ab Indiis Lusitanorum etiam abstinerent, quas Indias postea dict. art. 5. nobis cesserunt; (quatenus nempe loca quedam à Lusitanis recuperare possemus): Regis quoque Legatos ad singula separatim tunc respondiſſe; & quidem ad primum; durum esse Regem impedire velle, commercia exercere ad ea loca, quæ libera essent, & quæ commercia aliis gentibus concedere possent. Ad alterum; iniquum fore, si Rex impediretur progressus facere adversus Lusitanos, quos rebelles appellabant. Quæ expressa de utraque re separatim facta mentio, & congruens Legatorum responſio, luce meridiana clarius ostendit prohibitam illam navigationis extensionem, non solum referri debere ad Indias Lusitanorum, ne scilicet Hispani sub prætextu belli contra Lusitanos gerendi, limites nostros & commercia infestarent; sed etiam omnino referenda esse ad Indias, tam nobis, quam aliis Principibus subjectas; item ad loca libera, quæve sui juris sunt, & commercia aliis Gentibus concedere possunt, modo Fœdere & Privilegio Societatis Fœderati Belgii sint comprehensa. Ad quæ omnia Hispaniarum Rex dicto art. V. pollicitus est, subditos suos navigationem commerciorum causa non extensuros, ultra quam tunc temporis navigare erant assueti. Quod etiam usus, qui optimus omnium Fœderum & pactorum interpretis est, ad hanc usque ætatem confirmavit, & nos evidenti exemplo, quod non multo post Pacem Monasteriensem contigit, Dissert. nostræ §. 6. probavimus. Nempe cum sæpius memoratus B. Brouwer Hispano-Brabantus, anno 1653. tentasset ad oras Chineses navigare, hoc illi interdictum fuisse, non quasi Chinesæ Regnum haud esset liberum, sed quia Hispani tempore Pacis Monasteriensis eo navi-



possess by them; and that they should never extend their Navigation beyond their present limits. For the King of Spain granted to the Company of the United Provinces not only the Towns, Fortresses, Castles and lands of which they were then in possession, but also whatever others they should thereafter possess or acquire, without violating this Treaty, with all the Commerce thereto belonging. But if any one should doubt, if by this prohibition, the Spaniards were restrained from trading with such places as were free & independent, & at liberty to trade with any other Nation whatsoever; as well as from that part of the Indies possess'd by the Portuguese, where the said Spaniards, making war upon those Portuguese, at that time both our enemies and theirs, might invade our limits, and become detrimental to our Commerce; let him consider the representation of the aforesaid Directors, which together with the answer of the King of Spains Ambassador I have inserted in my former Dissertation, where it appears that those two different things were treated separately in different articles: In the first, the Directors desir'd that the States should take care to hinder the Spaniards from extending their Commerce farther in the East-Indies; and in the other, that the said Spaniards should also abstain from those parts of the Indies possess'd by the Portuguese; which parts were afterwards granted to us by the said 5 Art. (as far as we should recover them from the Portuguese): The Kings Ambassadors also answered to each of those Articles separately; to the first, that it was hard that we should pretend to restrain the King from trading to such parts as were free, and might trade with all other Nations; And to the other that it would be unjust to hinder the King from reducing to his obedience the Portuguese whom they called rebels. The mention of each of those things being expressly and separately made, together with the distinct answers then given by the Ambassadors, make it as clear as noon day, that this restriction did not only relate to the Portuguese Indies [least the Spaniards under a pretext of doing acts of Hostility there should infect our limits & hinder our Commerce] but likewise to all those parts of the Indies, either in the possession of us or other Princes, as also all free places which are independent and at liberty to trade with other Nations, as far as these places are included in the said Treaty, and in the Privilege of the Dutch East-India Company: to all which places the King of Spain has promis'd in the said V. Article, that his Subjects should not trade, nor extend their navigation beyond their accustomed limits. We have also prov'd in our former Dissertation, that Ufe, the best interpreter of Treaties & Contracts, hath confirm'd it to this time; and we have proved it by a very evident example, which happen'd not long after the Peace of Munster: for when B. Brouwer a Spanish Brabander whom we have often mentioned, undertook in 1653. to navigate to China, he was hindered: Not because China was not a free Coast, but because the Spaniards did not use that navigation at the time of the Treaty of

sec. XI.

sec. VI.

navigare non erant assueti. Idem alio exemplo, extra hujusmodi fœderis vinculum, ex causa similitudine nuper demonstraverunt DD. Directores Societatis India Occidentalis, in Remonstracione, quam anno præterito tradiderunt PP. DD. Ordinibus; scilicet cum Scoti, ineunte hoc seculo, in Regione Americana nomine Darien, sub prætextu, quod hæc Regio esset libera, & in ditionem Hispanorum nunquam redacta, coloniam construxissent, ad stabilienda ibi commercia sua, cum consensu & permissione incolarum, seu Domini loci; & Hispani Serenissimo Magna Britannia Regi contra ostendissent, hanc Regionem, quantumvis liberam, pertinere ad dependentias suas; (ut hoc verbo utar) quoniam unicum iter præberet, ad commercia per terras cum utraque America parte continuanda: quæ interromperentur & ipsis infructuosa fierent, si Scotis ibi coloniam habere liceret; Alre memoratus Magna Britannia Rex, æquitate rei motus, non agrestalis, ab Hispanis Scotos decedere recusantes, armis inde expulsos esse. Vide l'Histoire du Roi Guillaume, livre. 8. p. 370. Item Mercurium Europæum ad annum 1700. mense Julio. \*

§. III. At mare & commercia libera esse oportere, ait D. Neny, neque Hispaniarum Regem ita subditos suos libertate naturali privare, aut fœdus cum alia Gente facere potuisse, quo minus ipsis navigare liceret, quocumque aliis Gentibus navigare, & commercia exercere liberum est. At nos jam ante monuimus, libertatem illam navigandi & commercandi non esse de absoluto hoc Jure Naturali, quod inter Gentes, quarum interest, legibus & fœderibus restringi ac prohiberi non possit; quod ex antiquioris ævi monumentis etiam plena exemplorum manu demonstrari posset, nisi hæc nostra ætas prohibitionum & restrictionum istiusmodi tantam copiam exhiberet, ut propterea ad antiquitatem recurrere opera pretium non videretur. Imo, inquit D. Neny, acerrimus vester Maris Liberi Vindex Grotius, his serio contradixit, contendens mari a nullo mortalium servitutem imponi posse, atque ideo navigaciones & commercia nulli posse prohiberi, præsertim ad loca libera,

\* Præter quæ D. Auctor hic addert de Scotorum incepto in Isthmo Darien, notandum (quod non parvi momenti in hac controversia videtur) quamvis Scoti amplissimis Privilegiis muniti essent ad navigationes & commercia in Africam & utrasque Indias instituenda, & sibi licitum existimassent coloniam in isto loco libero ponere, cum nullum obstarat fœdus; Nihilominus Mag. Britannia Rex, audita hac de re gravissima querela Hispanorum, cum quibus pacem & amicitiam enixe colere voluit, non solum factum reprobavit, sed & ilico mandata dedit ad omnes suos subditos, præcipue in coloniis Anglico-Americanis, ne quis eorum sub gravissima poena, Scotis, Coloniam illam contra pacem cum Hispanis, instruendis, ullo modo faveret; nec illos concilio, auxilio, vel alio quocumque modo adjuvaret. Atque Mandata illa (quorum unum instar omnium in Apendice adjicimus) efficaciora fuisse quam Hispanorum Arma, ad Scotos ab Isthmo Darien depellendos. Videatur etiam hac de re *Larry Hist. d'Angleterre* &c. Tome IV. p. 828. 829.

Munster. There is also another example which, altho' not done in consequence of a Treaty like this, yet from the similitude of the case, was made use of last year by the Directors of the West-India Company, in a Remonstrance delivered by them to the States (viz.) when the Scots at the begining of this Century had established a Colony at a place in America call'd Darien, with the consent and permission of the inhabitants and Lords of that place: tho' they pretended that it was a free country, as never having been under the subjection of the Spaniards, yet the King of Spain having remonstrated to the King of Great Britain, that that country, however free in it self, yet was a dependence of the countrys belonging to him, as being the only passage which his Subjects could make use of by land, to maintain the communication & Commerce between North & South America, which would be interrupted and quite broken off if the Scots should be allow'd to settle there: The said King of Great Britain was so satisfied with the justice of the complaint, that he did not at all resent, that the Spaniards us'd force of Arms to oblige the Scots to leave the place. As may be seen in the *History of King William*, lib. 8. p. 370. as also in the *Mercury of Europe*, of July 1700.\*

III. But, says Mr. *Nen*, the Sea and the Commerce of it ought to be free; and the King of Spain had no right to deprive his Subjects of their natural liberty, or to make a Treaty with any other Nation whereby they should be restrained from navigating to those parts where it was free for other people to trade and navigate. But we have before remark'd, that the liberty of navigating and trading, is not of such absolute natural right, as that it may not be prohibited and restrain'd by laws and Treatys made betwixt Nations concerned; which might be easily proved by a multitude of examples from former ages, if the great quantity of such Prohibitions and Restrictions in our own times, did not make such a research unnecessary. But, says Mr. *Nen*, your own *Grotius*, a strong asserter of the freedom of the Sea, has formally contradicted such pretensions, and maintains, that no mortal has any right to restrain the freedom of the Sea, nor can therefore hinder any one from navigating and trading, especially to such places

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\* Beside what our Author here relates about the undertaking of the Scots at Darien, it may be of some importance in this controversy to remark, that tho' the Scots were fully authorised by their Patents &c. to establish their navigation & trade to Africa & the Indies both East & West, &c. thought they might lawfully settle a Colony in Darien, a free place & contrary to no Treaty; Yet a heavy complaint being made to K. William against it, from the Court of Spain, with which he was desirous to live in a good correspondence; he not only disowned the thing, but sent orders to all the English Plantations in America, that none should presume, on pain of the severest punishment, to hold any correspondence with the Scotch Colony erected in Darien, contrary to the peace between his Mai. & his Allies, or give them any assistance on any pretence whatsoever. As may be seen by that published in Jamaica, of which a Copy is here annexed. And these orders contributed more than the Spanish Arms to drive the Scots out of Darien. See on this matter the *Collection of State Treaties in K. William's Reign*, Vol. III. pag. 494. &c.

Append.  
No. IV.



vera, sique juris, quæ ab Europæis Gentibus nondum sunt occupata. Sed si Viro Clarissimo lubeat cognoscere, quid Grotius, aliique nostri temporis celeberrimi Isti hac de re & senserint, & scripserint, ultro ab inanibus istiusmodi conjectationibus abstinere. Quid enim opus est ex incertis, aut ambiguis Grotii verbis conclusiones necere, quum adire liceat atque consulere hunc ipsum Auctorem in notissimo opere de Jure Belli & Pacis lib. 2. cap. 3. §. 15. ubi ex professo hanc materiam (quando nempe res incidit in conditionem fœderis) tractavit, atque expressis verbis contrarium docuit; ita enim scribit: Possunt enim ut singuli, ita & populi, pactis, non tantum de jure quod proprie sibi competit, sed & de eo quod cum omnibus hominibus commune habent, in gratiam ejus cujus id interest, decedere; quod cum sit, dicendum est, quod dixit Ulpianus in ea facti specie, qua fundus erat venditus hac lege, ne contra venditorum piscatio Thynnaria exerceretur, mari servitutem imponi non potuisse, sed bonam fidem contractus exposcere, ut lex venditionis servetur. Itaque personas possidentium, & in jus eorum succedentium obligari. Assentitur hac in re Viro Maximo Loccenius de jure maritimo lib. 1. cap. 4. n. 7. Item Leikherrus de jure maritimo cap. 7. & 12. & novissime Puffend. de Jure Naturali & Gentium, lib. 4. cap. 5. §. 10. scribens hunc in modum: Ex hisce liquet pacatam Oceani navigationem omnibus esse liberam, cum nemini adhuc tale jus in eum sit constitutum, ut cæteros inde arcere queat: & per legem humanitatis talem esse debere, adeoque neminem posse prohibere, quo minus populi Oceanum accolentes, ipsi non subiecti, inter se commercia instituunt, nisi pacto tale jus sibi quæsierit, ut, aut unus populus in ipsius gratiam certum quempiam populum a suis commerciis arcere teneatur, aut quia ipse cesserit facultate sua ad eum populum navigandi. Et paulo post: Hoc ipsum est libertatis, ut quis de jure suo alicui tertio per pactum cedere queat. Et in fine istius §. 10. Ita si v. gr. populus Europæus regionem aliquam Asiæ aut Indiarum suam fecerit eo modo, qui inter gentes Dominium parere solet, recte quoque, si videbitur, omnem aditum ad eandem commerciorum causa susceptum, cæteris poterit præcludere, aut non, nisi sub certa conditione, certo ve onere permittere. Id quod ita observari videmus, nec in eo quicquam apparet, quod naturali rationi repugnet. Nam illa tantopere jactata commerciorum libertas non obstat, quo minus civitas plus suis civibus, quam exteris favere queat.

§. IV. Apparet igitur meridiani solis luce clarius, talia pacta omni jure licita esse, nec naturali juri adversari; sicut hodie etiam nihil frequentius est, quam ea inter populos quorum interest, & iniri & servari. Quare, si verum sit Regem Hisp. post Fœdus Monasteriense ejusmodi Privilegium, de quo loquitur D. Neny, dedisse; hoc saltem certum est, quod Rex de jure suo, aut de Indiis suis aliquid concedere au largiri potuerit, non autem de alieno, adeoque nec de Indiis, quas commerciorum causa nobis jam ante cesserat; quum hæc duo in uno eodemque actu minime subsistant,

as are free, and independent, or to such as are not in the possession of any European Nation. But when this Gentleman comes to know what *Grotius* and other famous Lawyers of our own times have thought and wrote upon this subject, he'll abstain of course from trifling after this manner. For what occasion is there to draw conclusions from a few uncertain or ambiguous terms of *Grotius*, when we may go and consult the Author himself in his famous work *de Jure Belli & Pacis* lib. 2. cap. 3. §. 15. where he expressly treats of this matter (that is in cases of contract) and in express words teaches the very contrary. *Whole Nations*, (says he) as well as private persons, may renounce in favour of another, not only such rights as are peculiar to themselves, but also such as they have in common with others: and in that case we may say with *Ulpian*, in a case where land was sold on this condition, that the seller reserved entirely to himself the right of fishing Tunne, without allowing any such right to the buyer, that the liberty of the sea could not be restrained, but by the faith of the Contract it was necessary to keep to the condition of the Sale; & therefore the buyers or possessors were really bound to it. With this great man agrees *Loccenius de Jure Maritimo*, Lib. I. Cap. 4. n. 7. as also *Leikherrus de Jure Maritimo*, Cap. 7. & 12. & likewise *Puffendorf de Jure Natura & Gentium* Lib. IV. Cap. 3. §. 10. where he says: Hence it appears that the peaceable navigation of the Ocean is free to every one, since no man has yet got such a right to it that he may exclude others, & since it ought to be free by the laws of humanity: and therefore no man has a right to hinder people, not subject to him, living on the Sea coasts, to trade with one another; unless he has acquired by convention such a right, that one nation in his favour is bound to forbid all trade with another nation, or has yielded up to him its right of navigating to that nation. And a little lower; This is true liberty, that any one may by convention yield his right to another. And at the end of this paragraph, So if any European Nation has acquired the possession of any country of Asia or the Indies, in such a way as dominion is usually acquired among men, that nation may very justly if they please forbid all others to trade there, or allow them only on certain conditions & with certain restrictions. This is what we see commonly practised, nor do I see that it is at all unreasonable: For the freedom of commerce so much cried up does not hinder any State from favouring its own Subjects more than foreigners.

Nothing then can be more clear than that such Treatys are by all laws allowable; nor are they contrary to the law of nature, as we see by dayly instances of such Treatys made and kept by the different Nations that are concerned in 'em. Wherefore if the King of Spain after the Treaty of Munster, did grant such a Privilege as Mr. *Neny* speaks of, this at least is certain, that that King had a power to give or grant whatever he pleased of his own right, or of his own Indies, but nothing at all of what belonged to another; and by consequence none of

stant, Fæderis mentionem facere, & permittere, ut contra Fædus navigetur. Absurdum itaque sequeretur, si obtinere deberet sententia D. Deny, qui contendit per loca libera intelligenda esse loca sui juris, quantumvis ratione commerciorum secundum pacta conventa non amplius libera sint, & eatenus ad alterum, cui commercia eorum soli relicta sunt, pertinere intelligi debeant.

Proinde, si Belgii Hispanici incolæ conatibus suis desistere nolint, & res (quod Deus quidem avertat) aliter expediri nequeat, non culpanda forent Societates Fæd. Belgii, si armis, juris sui servandi gratia, uti cogerentur. Neque Cæsarea sua Majestas hoc ægrius ferre posset, quam Magnæ Britanniae Rex illud tulit, dum subditos suos a Darien decedere nolentes ab Hispanis vi armata expelli passus est. Nec obijcere quis poterit cum Nobili Germano, qui nuper de hac eadem re scribens, ex Grotio de Jure belli & pacis lib. 1. cap. 3. §. 4. perperam allegavit, læsæ Majestatis teneri, qui injussu Principis bellum gesserit, delectumve habuerit, exercitum comparaverit. Nam si Vir ille nobilissimus pariter retulisset, quod laudatus auctor d. l. subjungit in Notis, videndum esse; an tales subdit acceperint Imperii Summi partem, aut a Principe acceperint Privilegium se muniendi ac tuendi, & suis viribus aliquid copiolarum ad defensionem alendi; & ipsi, & alii cognovissent illud, quod Grotius ibi refert, per l. 3. ad l. Jul. Majest. nec pertinere, nec referri posse ad Societatem nostram, cui omnes actus Summi Imperii, & speciatim etiam armorum usum in Indiis ad defensionem sui exercere, amplissimo Privilegio est concessum; quod cum propter causam onerosam datum sit a Principe, nec adimi, nec minui potest. Præterea actum defensionis pacem non rumpere, & injuriam facere non videri qui jure suo utitur, notissimi juris est.

### CAP. III.

§. I. Pergimus nunc ad tertium tædiosæ hujus controversiæ caput, cujus materia quo illustrior, eo nobis molestior est. Etenim porro inquirendum est, utrum Cæs. & Cathol. sua Majestas Belgicas Provincias possideat pari jure & modo, quo Augustissimi ipsius Majores eas possederunt ante etatem Philippi I. cognomento Pulcri; an potius Alte memorata Cæs. & Cath. Majestas easdem nunc possideat, sicut novissime defunctus Rex & Belgii Princeps Carolus II. eas possederat, nempe cum iisdem oneribus, juribus, commodis & incommodis, quæ Principes ante ipsum hisce Provinciis imposuerunt.

Quod ad prius attinet, illud affirmare videtur D. Neny Refut. §. 1. dum ait,

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those Indies which he had before yielded up to us for our Commerce: for it can never be consistent in the same Act, to mention a Treaty to be observed, and at the same time to permit such Navigation as is directly contrary to the said Treaty. It would be absurd then to allow what Mr. *Neny* pretends, that by free places, are to be understood, such as are of themselves independent, when in relation to commerce, by foregoing Treaties they are not free, but in that regard belong to such only as are permitted to trade to them.

Therefor, if the Netherlanders will not desist from their undertaking, and matters (which God forbid) cannot be accommodated otherways; the Companies of the United Provinces cannot be blam'd if they are oblig'd to make use of arms to defend their right. Nor can his Imp. Majesty have any more reason to resent this, than his Brit. Majesty had when he suffer'd that his Subjects should be driven away from *Darien*, by the Arms of the Spaniards. Nor can that be any objection which a German Gentleman, lately writing on this matter, has very improperly alledg'd from *Grotius de Jure Belli & Pacis*, Lib. 1. cap. 3. § 4. That he is guilty of Treason, who makes war, levys men, or raises an army without his Princes order. For if he had also related what that Author subjoins in the notes [viz] that it ought to be considered, whether such Subjects had obtained any share of the Sovereign power, or were authoris'd by any Privilege from their Prince to arm, and defend themselves, or to maintain Troops for their defence, both he and every body else would have seen, that *L. 3. & L. Jul. Majest.* which *Grotius* quotes here, does not in the least touch the case of our Company, to whom are granted, by a most ample Privilege, all the Acts of Sovereignty, and particularly, the use of arms for their own defence in the Indies; which since granted by the Sovereign for onerous causes, can not be taken away now nor diminish'd. Moreover to act in ones own defence is no breach of peace; and that he does no body injury who only makes use of his own right, is a known Maxim in law.

### S E C T. III.

I. I come now to the third head of this ungrateful dispute, the matter of which is so much more difficult to handle, as tis of greater consequence. And here we are to enquire whether his Imperial Majesty possesses the Netherlands by the same right and in the same manner, as they were possessed by his Ancestors before Philip I. Or whether his said Majesty possesses them only as they were possessed by their late deceased Sovereign K. Charles II. that is with all the rights, burdens, advantages & disadvantages which the Princes before him had brought upon them.

Mr. *Neny* seems to affirm the first, when he says., The stipulations made &

Les stipulations faites & arrêtées par les différents articles des Traités, dont on vient de parler, établissent d'une manière incontestable, que les Païs-bas Autrichiens sont unis à perpétuité aux Etats de la Très-Auguste Maison en Allemagne, & que Sa Majesté ne les possède en Souveraineté & propriété, que comme Souverain & Propriétaire desdits Etats, & comme Chef de ladite Maison, & conséquemment de la même manière, que ses Augustes Ancêtres les avoient possédés avant l'avènement de Philippe le Bel à la Couronne d'Espagne.

*Quod dum statuit, incidit in tempus Maximiliani I. memorati Philippi Parentis, cujus conjugio cum Maria, Caroli Audacis filia unica, Belgicæ Provincia primum ad Domum Austriacam deveniunt; licet hac ad Cas. & Cath. Majestatem nullo modo referri possint; quoniam Maximilianus I. hæc Provincias nunquam acquisivit, nec possedit tanquam verus seu naturalis Dominus, sed tanquam Dominus dotis, atque ita post mortem uxoris non suo, sed tutorio nomine illas administravit. Certum etiam est Cas. & Cath. suam Majestatem non successisse Maximiliano I. sed Carolo II. cujus heredem illum futurum fuisse, si Rex ille intestatus decessisset, atque hoc nomine Testamentum illius Regis oppugnasse, bellum indixisse, Regiones & Urbes occupasse, ex Confederatione Magna, ex belli indictione, aliisque actis tam liquido constat, ut illud hætenus inficiari nemo. Errat itaque D. Neny, cum tam indistincte arguit Cas. & Cath. suam Majestatem hæc Provincias possidere, sicut Illustrissimi illius Majores illas possederunt ante Philippi Pulcri ætatem, quoniam Majorum nullus ante hanc ætatem eas possedit, præter Maximilianum I. cujus possessio cum illa, quam Cas. & Cath. sua Majestas nunc obtinet, minime convenit. Nam si hac statuas, & cum D. Neny affirmare velis, Cas. & Cath. suam Majestatem non possidere tanquam Burgundia Ducem, & Successorem Caroli II. sed tanquam Austria Ducem, aut Successorem Maximiliani I. ad hanc absurditatem devenies, ut omnia Pacta & Fœdera, quæ Burgundia Duces, veri harum Provinciarum Domini, a Philippo Pulcro usque ad Carolum II. cum aliis Gentibus fecerunt, & omnes illorum Actus, imo ipsum Fœdus Monasteriense nullius esse dicas momenti. Atque ita tota possessionis causa, contra expressum Fœdus Antverpiense, mutabitur: quod tamen temerarius Nobilis cujusdam Germani calamus nuper admodum inconsiderate erupit, cum hac falsissima ratione ausus fuerit libertatem Reip. nostræ in controversiam vocare, & Majestatem ipsius publice impugnare, in libello, cui titulus: Gründliche Erweisung von Ihro Kayserlichen Majest. habendem Rechte zu Aufrichtung einer Ost- und West-Indischen Compagnie in dero Oesterreichischen Niederlanden &c, §. 15. p. 29. ubi ineptissime arguit, Prædictum Fœdus Monasteriense a linea agnatica juniore Augustissimæ Domus Austriacæ nunquam approbatum fuisse; adeoque eo non obligari Cæsaream suam & Cath. Majestatem, junioris hujus lineæ superstitem unicum agnatum. Quin eo etiam temeritatis provebitur, ut Diploma, quod brevi post Pacem Monasteriensem dederat Gloriosissimus Imperator Ferdinandus III. super Artic. 33. ejusdem Pacis, rogatu scilicet Hispaniarum Regis,*

agreed on by the different articles of the Treaties which we have been speaking of prove undeniably that the Austrian Netherlands are united for ever to the States of the most illustrious House of Austria in Germany, and that His Imp. Majesty does not possess them otherwise, but as Sovereign and proprietor of the said States, and chief of the said House, and by consequence in the same manner as his Ancestors possess'd them, before the accession of Philip the Fair to the Crown of Spain.

What he says here must be referr'd to the time of Maximilian I. Father of the said Philip, by whose marriage with Mary, the daughter of Charles the Bold, the Netherlands came first into the House of Austria; tho I don't see how this can have any relation to his Imperial Majesty; because Maximilian I. never acquired the said Netherlands, nor ever possessed them as true and natural Lord, but in right of his wife; and so after her death he govern'd them as Guardian, and not as Lord. 'Tis certain also that His Imperial Majesty does not succeed to Maximilian the I. but to Charles II, whose Heir he was to be if he had died without a Will. And that it was in this right that he oppos'd the Testament of the said King, declar'd war, seiz'd Countries & Cities, is plain by the Grand Alliance, & other acts, & is what no body till now has ever doubted. Mr. Neny therefore is out, when he talks so undistinctly of his Imp. Majesty's possessing those Provinces as they were possessed by his Ancestors before Philip the Fair, because none of his Ancestors before that time ever had possession of them, except Maximilian I. whose possession was very different from that of the present Emperour. And if you hold with Mr. Neny, that his Imp. Majesty does not possess the Netherlands as Duke of Burgundy and Successor of Charles II. but as Duke of Austria or Successor of Maximilian I. you must fall into this absurdity, that all the Contracts and Treaties, which have been made with other Nations by the Dukes of Burgundy, the true Sovereigns of the said Provinces, from Philip the Fair down to Charles II. as also all their Acts and even the Treaty of Munster would be of no force. And so the whole foundation of his Imp. Majesty's right would be chang'd, against the express Treaty of Antwerp. Which nevertheless has been rashly and inconsiderately urg'd by a certain German Gentleman, who has presumed by this false reason to call in question the liberty of our Republick, and openly to attack its Sovereignty, in a book under this title: *Grundliche Erweisung &c. or, A demonstration of the Right that his Imp. Majesty has to erect an E. & West-India Company in the Austrian Netherlands.* §. 15. p. 29. where he very fillily argues, *That the aforesaid Treaty of Munster was never approv'd by the younger branch of the House of Austria, and by consequence does not oblige his Imperial Majesty who is the only surviving heir of that line.* Moreover he goes to that height of impertinence to pretend that the Act given, at the desire of the King of Spain by Ferdinand III. a little after the Peace of Munster, upon the 53. article of that Treaty, about maintaining friendship and neutrality with



de bona amicitia & neutralitate cum P. P. D. D. Ordinibus conservanda, susque deque habendum esse, ibidem satis proterve contendat: hac etenim verba ejusdem diplomatis: dictumque Articulum, ejusque contenta, quatenus ea ad nos pertinent, pro nostra parte approbaverimus, ratificaverimus &c. tantummodo ad Imperatoriam Majestatem, non vero ad augustissimam Domum Austriacam, vel Romanum Imperium pertinere affirmat; unde hunc in modum concludere non dubitat: An Fœderatum Belgium ex tacita agnitione, & quasi possessione libertatis, contra pætensiones Imperii & Augustissimæ Austriacæ Domus, præscriptione (velut communi exceptione) jure se defendere possit, alii judicent. Verum, quid Vir Nobilissimus per Imperatoriam Majestatem, hic intelligat, nisi Supremum Imperii & Augustissimæ Domus Austriacæ in Germania Caput, fateor me non intelligere: & ne ipsum quidem me capere profiteor, qua Jurisprudencia Imperator, qui unum Articulum Fœderis, ad quem consensus & gratia ipsius requirebatur, expressis verbis distincte, & sine ulla Protestatione agnovit, & approbavit, non etiam intelligi debeat totum Fœdus approbasse, si illud approbatione indigisset; aut, quando quis approbavit aliquid, quantum ad se pertinet, & pro parte sua, illum non approbasse etiam pro posteris suis atque successoribus; præsertim quum res ipsa declaret, hac verba, quatenus ea ad nos pertinent, non ad exclusionem descendantium, sed ad aliam rem spectasse. Nam cum Art. 53. duæ res requirerentur, nempe Consensus Imperatoris intra duos menses, & Imperii Germanici intra anni spatium, Imperator ideo consentiens pro se, & pro parte sua, (non ut seipsum, aut descendentes eo excluderet) sed ne consentire videretur pro Imperio Germanico, cujus consensus seorsim requirebatur. Sicut hæc ex ipsissimis Diplomatis verbis, quod infra exhibetur, luce meridiana clarius apparet.

Apend.No.  
v.

§. III. Præterea, si totum Fœdus Monasteriense sedulo perscruteris, ad nullum ejus Articulum approbationem Imperatoris, aut Germanici Imperii requisitam esse deprehendes, nisi ad hunc unum Articulum 53. quo tamen ipso, si verba recte inspiciantur, non requiritur Approbatio Fœderis, verum ut Imperator & Imperium ad hoc Fœdus tanquam tertii accedant, ad bonam amicitiam atque neutralitatem cum Fœderato Belgio colendam; quod benigne etiam ab Imperatore promissum est, secundum verba ejusdem Diplomatis, qua summam ita se habent. Nos, re mature ac diligenter deliberata, pro singulari & propensissimo nostro in pacem quaquaversum promovendam ac propagandam studio, in ejusmodi petitionem clementer annuimus, dictumque Articulum, ejusque contenta, quatenus ea ad nos pertinent, auctoritate nostra Imperiali approbamus &c. Quamobrem hac verba, quatenus ea ad nos pertinent, longe aliud innuere videntur; nempe totum Fœdus Monasteriense ad Lineam Agnaticam Domus Austriacæ in Germania, ad Imperatorem, & ad Imperium, excepto hoc uno articulo, nihil omnino pertinuisse; adeoque Hispaniarum Regem, ut illud Fœdus cum Fœderatis Belgis iniret consensu hujus lineæ non magis indiguisse quam

the States, is to be reckon'd of no value, for he affirms that these words of that Act (viz.) *We for our part have approv'd and ratified, the said Article and whatever it contains as far as it relates to us &c.* Are only to be understood of His Imperial Majesty as such, but that the Archduke of Austria and the Roman Empire are in no manner concern'd in the affair: after which he is pleas'd to add. *I leave to others to judge if the United Provinces have a good right, from a tacit allowance & precarious possession of liberty, to defend themselves by prescription, as a sufficient reason, against the pretensions of the Empire & of the most illustrious House of Austria.* But what this Gentleman here means by His Imperial Majesty, as separate from the head of the Empire and chief of the House of Austria, I must confess I don't well understand. I would also fain know by what Law, the Emperor, who distinctly, in express terms, and without any scruple acknowledg'd and approv'd one article of a Treaty to which his favour and consent were requir'd, should not be understood also to have approv'd the whole Treaty, if it had wanted his approbation; and likewise when any one approves any thing, as far as it relates to him and for his part, whether he does not also approve it for his Successors and posterity; especially when the thing it self makes plain that the words, for as much as it relates to us, did no way concern posterity, but were us'd upon quite another account. For since the 53. Art. requir'd two things (viz) the consent of the Emperor within two Months, and that of the German Empire within a year; the Emperor consented in these terms, *for himself and for his own part*; not that his Successors should not be supposed likewise to consent to it, but because he should not seem to consent for the German Empire, whose consent was also separately required. This appears clearly from the very words of the said Act, which we shall give at the end of this Dissertation.

Append.  
No. V.

III. Moreover if you examine the Treaty of Munster you'll find that there is no other article in the whole Treaty which required the consent of the Emperor or the Empire except this 53. Art. alone. Nor does this itself, if the words are nicely examin'd, require an approbation of the Treaty, but that the Emperor and Empire should concur as Thirds, *for the maintainance of friendship and neutrality with the United Provinces*; which was freely promis'd by the Emperor in the words of the said Act, the substance of which is thus. *We after diligent and mature deliberation, and for our singular and extream desire of promoting and maintaining peace in all hands, do graciously agree to a petition of this nature, and approve with our Imperial Authority, the said Article and whatever it contains, as far as it relates to us &c.* So the words, *as far as it relates to us*, seem to have quite another signification [viz] that no other part of the Treaty of Munster, except this Article alone, had any manner of relation to the younger branch of the House of Austria in Germany, or to the Emperor or to the Empire; & therefore the King of Spain had no more occa-

quam V. gr. frater aut coheres aliquis, cui familia eriscunda iudicio fundus obtrigit, ad alienandum illum postea alterius quondam coharedis aut agnati consensu indiget. Erant enim Hispaniarum Reges a Philippo I. usque ad Philippum IV. dicti Fœderis auctorem, tam pleni Belgii Domini, ut ad ipsam Provinciarum alienationem tam Matrimonii, quam Hereditatis jure, nullius nisi Procerum consensu indiguerint. Nam si Ferdinandus III. tanquam Linea Austriaca in Germania Caput & Princeps, tunc temporis jus aliquod habuisset, propter quod hoc pacis Fœdus in detrimentum ipsius ratum esse non posset, solenni ritu ipsum protestatum fuisse oportuerat, ne sciens & tacens jus suum remittere videretur. Jam vero quandoquidem hujusmodi protestatio facta non est, sequitur totum illud Fœdus, præter hunc unum articulum, ad lineam agnaticam Domus Austriaca non pertinuisse. Quantum vero ad Romanum Imperium attinet, verum quidem est Imperat. Carolum V. aliquando hæc Provincias eidem Imperio, Burgundici Circuli nomine adiunxisse, hac tamen conditione, ut suis propriisque legibus regerentur, & ad onera, quæ requirebantur ad communem defensionem, tantum contribuerent, quantum duo Electoratus. Sed recte a Puffendorfio observatum est, banc conjunctionem brevi post sponte evanuisse, & omni fere effectu caruisse, quum ait in Libro de statu Imp. Germ. Cap. 2. §. 4. Sed quæcumque ratio subegerit, ea conjunctio fere effectu carere visa fuit, nisi quod Burgundiæ nomine in Comitibus suffragium fertur; nam ita ample Belgarum libertati cavendum fuit, ut tota illa incorporatio ad solam fere causam tributorum, quæ pro communi tutela Germaniæ essent necessaria, adstringeretur; quæ & ipsa tamen Belgæ conferre abnuerunt; ac vicissim Germaniæ Ordines nunquam se obligatos crediderunt ad partem bellorum Belgicorum capeffendam, velut ad se nihil spectantium. Unde etiam sequitur, Imperii consensum ad Art. 53. non alium in finem requisitum esse, quam ut bona neutralitas inter Imperium & Fœd. Belgium coheretur, quemadmodum etiam Imperatoris consensum requisitum esse supra diximus. Denique etiam Majestatem Reipublicæ ab ipso Ferdinando III. deinceps semper agnitam esse, nec non ab Imperio Germanico & Membris Imperii, imo ab ipsa Cæsarea & Catholica sua Majestate, atque ab Augustissimis illius Majoribus, infinitis actibus probari posse, si id probatione indigeret quod nunquam in dubium vocatum a quoquam fuit.

§. IV. Sed ne tempus teramus respondendo hujusmodi argutiis & subtilitatibus, quæ (ut recte doctissimus Gronovius ad Grotii lib. 2. Cap. 7. §. 27. de jure Belli & Pacis notavit) omnem bonam fidem de Fœderibus summorum Principum tollunt; redeamus ad id, quod proprie ad rem nostram pertinet; qui hic non agimus de jure Domus Austriacæ, aut Germaniaci Imperii, sed de jure Ducum Burgundiæ,



occasion for the consent of this other branch towards the making of the Treaty of Munster with the United Provinces than (for example) a brother or coheir to whom an estate is finally adjudged with the consent of the family & others concerned, has occasion for their consent in selling it afterwards: For the Kings of Spain from Philip I. down to Philip IV. with whom the said Treaty was made, were so absolutely Lords of the Netherlands, that to alienate them either by Marriage or Heritage, they wanted nothing but the consent of the States. For if Ferdinand III. had, at that time, as Prince and Chief of the branch of Austria in Germany, any right which could have hindered the ratification of the said Treaty to his detriment, he ought formally to have protested against it, least by wilfull silence he might seem to quit his pretensions. But seeing there was no such protestation made, it follows that no part of this Treaty, except this article alone, any way concern'd the younger branch of the House of Austria. As to what relates to the Roman Empire, 'tis true indeed that the Emperor Charles V. once united those Provinces to it, and call'd all together the Circle of Burgundy: but upon this condition that the said Provinces should be still govern'd by their own Laws, and should contribute to the common defence as much as two Electorates. But 'tis justly observed by Puffendorf that this union was of very little effect, and in a short time vanished of its own accord; he says in his book *de Statu Imp. Germ.* c. 2. § 4. But, *what ever might be the reason, this union seem'd to be almost of no effect, except giving a vote in the Diet of the Empire for Burgundy, for there was so much care taken of the libertys of the Netherlands, that this incorporation seem'd to be made only that they might contribute to the common safeguard of Germany as there was occasion for it, which yet the Netherlands refused to do, as the States of Germany in their turn did not think themselves oblig'd to take part in the wars of the Netherlands, as not at all concern'd in them.* From whence it follows that the consent of the Empire to the said 53 article was no farther requisite than to preserve a good neutrality betwixt the Empire and the United Provinces; for which reason the consent of the Emperor was also required, as we have said before. As for the Sovereignty of our Republick, it would be easy to prove by numberless documents, that it was always acknowledged, after the Treaty of Munster, by the said Emperor Ferd. III. & by the Empire & the different Members of the Empire; & also by his present Imp. Majesty, as well by his most illustrious Predecessors, if such a thing wanted proofs which was never yet called in question by any body.

IV. But not to lose time in answering such Cavillings and subtleties, which Gronovius in his notes on *Grotius* has well observed, are only fit to destroy all the faith which is due to the Treaties of Princes, let us return to the matter in hand, for 'tis not our business to dispute about the rights of the House of Austria or of the German Empire, but about that of the Dukes of Burgundy, who were

De Jure  
Bellii &  
Pacis lib. 2.  
cap. 7. § 27.

qui quondam Belgii Principes fuerunt, & quorum postremo Carolo II. Cas. & Cath. Majestas, non tanquam Austria, sed tanquam Burgundia Dux Duci successit; quod quum aliunde satis probari possit, restat ut hic tantum inquiramus, an jus illud hereditarium, seu successionis, respectu Cas. Majestatis ac Fœderatarum Potestatum, quarum intererat, quodammodo mutatum sit, sive per bellicam occupationem, sive per Confederationem, aut per transactionem, vel aliam quamcumque rem, qua post obitum Caroli II. acciderit.

Certe, si Principum res privatorum causis assimilare nobis liceret (quia ut ait Imperator in l. 4. Cod. de LL. illorum auctoritas a juris auctoritate pendet, & digna Majestate Imperantis vox est, alligatum legibus se Principem profiteri,) nos istam hereditatis, & successionis seu possessionis causam, respectu Cas. & Cathol. suae Majest. per armorum interventum, seu bellicam occupationem, de jure non magis mutatam putaremus, quam si, v. gr. privatus aliquis, lite mota, hereditatem, qua ipsi debebatur, acquisivisset; qui creditoribus defuncti & aliis quorum interest, objicere nequit, se istam bonorum possessionem non obtinuisse jure heredis, sed ex causa judicati, vel ex pacto, si forte, pendente lite, inter cohæredes de ea re transactum fuisset, quoniam, sicut in privatis causis sententia judicis, & pacta seu transactiones jure hereditario nituntur, & hujusmodi pactio:bus cohæredes ab oneribus hereditatis non liberantur; quin unusquisque eorum creditoribus, pro parte quam ex hereditate consecutus est, maneat obligatus, haud secus ac si judicatum vel transactum non fuisset; ita in hoc casu omnis armorum usus, & bellica occupatio, nec non pacta seu transactiones de hac hereditate facta, eodem jure nixa fuerunt. Quamobrem ad majorem cautelam articulo I. tractatus de Barrière expresse id actum conventumque est, ut Cas. & Cathol. sua Majestas hæc Provincias possideret, sicut postremus Hisp. Rex & earum Provinciarum Princeps eas possederat, aut possidere debuerat; hoc est cum omnibus juribus oneribus commodis & incommodis, sicut tempore mortis ejusdem Regis fuerunt. Nec imputandum est PP. DD. Ordinibus, quod rerum humanarum vicissitudine coacti, Cas. & Cath. sua Majestati non omnia pro voto conficere potuerunt; præcipue cum Magna Confederatio ista conditione facta non fuerit, ut; nisi debellatum esset, ac Cas. & Cathol. sua Majestas tota hereditate potiretur, omne id, quod a parte Cas. & Cathol. suae Majestatis in favorem Magnæ Britanniae Regis & Fœderatis Belgii repromissum erat, irritum foret, verum ut illud præstaretur, si non in omnino Hispanica Monarchia ditionibus, saltem in terris quas belli fortuna recuperare liceret; id quod liquidissime probatur per ipsum prædicta Confederationis Instrumentum, quo id inprimis actum est, ut Fœderati Principes operam darent, ut C. S. M. via amabili & per transactionem, aut si hac non succederet, par armæ æquam & rationi convenientem satisfactionem in causa memoratæ successionis ob-

formerly Sovereigns of the Netherlands, and to the last of which, Charles II. succeeded his present Imp. Majesty, not as Duke of Austria but of Burgundy, which may be sufficiently prov'd in another place, so what remains for us to inquire is, whether that hereditary right or Succession, with respect to His Imperial Majesty and such of his Allies as are concerned, hath been any way changed, either by Wars, Alliances, Transactions or any other thing whatsoever that has happen'd since the death of the said Charles II.

And if we may compare the affaires of Princes with those of private men (because as Justinian says, *Their Authority depends upon the authority of the Law, and tis a saying worthy of the Majesty of a Sovereign to acknowledge himself tho' a Prince yet to be oblig'd to observe the laws*) we may be certain that the nature of inheritance, succession or possession, with respect to his Imp. Majesty, by the intervention of War or Arms, is no more chang'd in equity, than if (for example) any private man was to sue for an heritage and recover it by law, & should afterwards object to the Creditors of the deceased, or others concerned, that he does not now possess those goods in right of inheritance, but by the decision of the Court, or perhaps from some convention or contract made between the parties whilst the suit was depending: For as in private cases, the sentence of the Court, as well as agreements or treaties are founded on hereditary right, & the Coheirs by such agreements are not freed from the burdens that lay on the inheritance, but on the contrary every one of them remains bound to the creditors for the share he has of that inheritance, in the same manner as if there had been no sentence or no agreement: So likewise in this case all the use of Arms & possession by War, as also all the Contracts and Treatys made about this Succession are founded on the same right: For which reason in an article of the Barriere Treaty it is, for the better security, expressly stipulated and agreed, *That His Imp. & Cath. Majesty should possess those Provinces as they were or ought to have been possessed by the last King of Spain their Sovereign*, that is with all rights, incumbrances, advantages & disadvantages, as they were at the time of the said Kings decease. Nor is it to be imputed to the States, that by the vicissitude which all human things are subject to, they were not able to do so much for His Imp. Majesty as they desir'd; especially seeing the Grand Alliance was not made upon the condition, that, unless all was conquered, and His Imperial Majesty put in possession of the whole inheritance, all the promises made by his said Imp. Majesty to the King of Great Britain and the States of Holland should be void; but on the contrary that all should be performed as it was agreed on, if not in all the parts of the Spanish Monarchy, at least in such of them as they should have the fortune to recover. And this is clearly prov'd from the very Treaty of the Grand Alliance, where tis especially covenanted, that *the Allies shall do their endeavour, that His Imp. Majesty, in a friendly way and by Treaty, or if that don't succeed, by Arms, may obtain a just and reasonable satisfaction with regard to the said*



obtineret, atque ut vicissim Magnæ Britanniae Regi & DD: Ordinibus securitas sufficiens præstaretur, pro custodia finium suorum, atque ut Navigatio & Commercia sarta tecta servarentur; sicut hoc latius demonstratum est Dissert. nostræ, §. 15. & 16. & porro apparebit ex Fœdere Antverpiensi, vulgo dicto Tractatu de Barriere, inter Cath. & Cæs. S. M. & Serenissimum M. Britannia Regem ac PP. DD. Ordines die 15. Novemb. ann. 1715. factis; quippe quo præcipua illa capita, quorum intuitu Confœderatio Magna erat inita, nempe Securitas finium & Commerciorum, Sereniss. Magna Britannia Regi & DD. Ordinibus renovantur & confirmantur, ac statim in Preambulo ejusdem Tractatus repetitur: ut Belgii Hispanici Provinciae Confœderatis Potestatibus essent pro obice & propugnaculo, non tantum ad mutuam defensionem, sed etiam ad conservationem Commerciorum suorum. Et art. 26. Ut Commercia & quaecunque inde dependent, in totum & per partes, inter subditos utriusque Belgii subsistant eo statu & modo, quo illa subsisterunt, & stabilita fuerunt per articulos Fœderis Monasteriensis, anno 1648. inter Glor. Mem. Regem Philippum IV. & PP. DD. Ordines initi, qui articuli, quantum ad commercia pertinent, isto tractatu denuo confirmantur. Sic etiam articulo 22. ejusdem Tract. Cæs. & Cath. S. Majestas æs alienum defuncti Regis PP. DD. Ordinibusolvere recepit: pluraque alia ab eo profecta sunt, quæ uti hic recensere longum foret, ita luce meridiana clarius demonstrant, illud successionis jus, quo Cæs. & Cath. sua Majestas Belgicas Provincias acquisivit, respectu Fœderatorum Principum, quorum interest, mutatum non esse occupatione bellica, vel transactione, aliove pacto contrario, quo minus scilicet Alte Memorata Majestas Fœderum antiquorum effectum ejusdem Principibus præstare teneatur, non secus ac defunctus Rex, si vixisset, ad illius præstationem fuisset obligatus.

Sed objicit hic iterum D. Neny: Quoniam commodum Art. 5. Pacis Monasteriensis est penes Hispaniarum Regem, tanquam Indiarum possessorem, eundem Regem etiam incommodum sequi oportere; & durum quidem esse, Belgii Austriaci incolas incommodis Fœderum onerari, qui commoda nulla exinde percipiunt. Sed respondemus ad Belgii Austriaci incolas commoda Indiarum nunquam pervenisse; quamobrem nec incommoda hodie sentire possunt: Si qui vero sint, qui grave damnum & incommodum sentiant, esse Societates Privilegiatas Fœderati Belgii, quæ ab una parte Hisp. Regi manent obligatæ, ab altera parte omnia jus suum & commercia ad Indias, una cum Privilegiis interire vident. Nam si Belgii Austriaci incolis liceat quaquaversum limites. Privilegii nostri Commerciorum causa frequentare, atque in Indiis navigare, modo abstineant a locis nonnullis, quæ Societas nostra tanquam propria possidet; ratio ex pari iniquitatis causa postulat, ut idem concedatur incolis Fœderati Belgii; ut nempe civibus nostris, potius eadem liber-

Succession; and that sufficient security be given to the King of Great Britain and the States of Holland for defense of their frontiers, and the preservation of their Navigation and Commerce; as is prov'd more fully in our Dissertation; <sup>Dissert. II. Sect. XV. it is XVI.</sup> may be seen also in the Treaty of Antwerp commonly call'd the *Barrier Treaty*, made Nov. 15. 1715. betwixt his Imp. Majesty, the King of Great Britain, and the States of Holland, for there the Principal heads, with view to which the Grand Alliance was made, (*viz*) the security of their frontiers & their commerce: are renew'd and confirm'd to the said King of Great Britain and the States, as 'tis recited in the Preamble of the said Treaty: *That the Spanish Netherlands should serve as a Barrier to the Allies, not only for their mutual defence, but also for the preservation of their Commerce.* And Art. 26. *That their Commerce and whatever depended on it, in whole or in part, should continue between the inhabitants of both the Netherlands, in the same way and on the same foot, that it was settled and regulated by the articles of the Treaty of Munster in 1648. between K. Philip. IV. of happy Memory, and the said States, which articles so far as they relate to trade are again confirm'd by this Treaty.* So by Art. 22. of the same Treaty, *His Imp. Majesty has taken upon him to pay the debt of the said deceas'd King to the States.* There are many more things that have followed upon this, which it would be too tedious to relate here, that yet prove very clearly, that that right of Succession by which his Imp. Majesty is possess'd of the Netherlands, with relation to the Allies therein concern'd, has no way been chang'd, either by War, or Transaction, or by any Contract, so as his said Imp. Majesty can be releas'd from the performance of former Treaties made with the said Princes, any more than the deceas'd King could be, if he were still alive.

But Mr. *Neny* objects here again; That because the K. of Spain has possessions in the Indies & enjoys the benefit of the V. Article of the Treaty of Munster, he ought also to bear the inconveniencies of it; but that it would be hard to burden the Netherlanders with the inconveniencies of the said Treaty, seeing they receive no manner of benefit from it. But we answer; that the said Netherlanders never enjoy'd any benefit from the Indian trade, and therefore can not now be said to suffer any loss in being depriv'd of it: and if any are to complain of considerable losses and inconveniencies, 'tis the Companies of the United Provinces that have most reason; since on the one hand they remain oblig'd to the performance of the Treaties made with Spain, and on the other they are depriv'd of their Rights, their Commerce and their Privileges. For if it were reasonable to allow the Netherlanders to navigate to the Indies, and to trade every where within our limits, abstaining only from those Places which our Company possesses in property, it would be every whit as reasonable that such an allowance might also be made to the inhabitants of the United Provinces, or that this liberty were

libertas detur, quam alienigenis; atque hi suo, potius quam Brabantorum nomine, & recta via magis quam per ambages (ut nunc fit) eadem Commercia una cum Brabantis exercere permittatur, quando brevi actum fore de Privilegiis nostris, nemo non videt.

Atqui abstinere se dicunt prædicti Belgii Austriaci incolæ in Indiis Orientalibus a regionibus & locis, quæ commerciorum causa a Societate Privilegiata Fœd. Belg. tenentur. Sed si hoc verum sit, rogo, quid igitur fecerint in Mari Rubro? quid ad Malebaricum? quid ad Cormandelicum littus? quod utrumque castellis, oppidis munitis, tabernis & stationibus nostris fere totum occupatur. Quid in ostio Bengalenfi, & emporiis sub Imperio Magni Mogolis? Ad quem legatio a Societate nostra nuperrime missa, Privilegiorum & contractuum cum illo Principe renovandorum gratia, eidem Societati constitit circa 240000 Ducatis aureis, sive floren. 1300000. Quid ad oras Chineses? Quorū Hispanis a tempore Parisi Monasteriensis navigare nunquam licuit? Quid ad Insulam Ceylon, & alia loca? Ut nihil hætenus intentatum reliquerint, præter Aromatum Insulas & pauca oppida, quæ quidem sunt in Dominio Societatis nostræ, sed tam immenso oneri habentur, ut una cum dependentiis suis per totam Indiam Belgicam quotannis, sine gravissimis impensis 150000 Ducatorum aureorum sive 750000 flor. custodire & conservari nequeant. Sed quamvis ea, quæ diximus, tam vera sint, ut ab ipsis exercitoribus & navium magistris, qui nuper Ostenda ad Indias navigare cœperunt, negari non possint, mirifice tamen detorquentur a D. Neny: Refut. suæ §. 3. sequentibus verbis.

Ces Sociétés ont des Isles & païs aux Indes, qui leur appartiennent en propriété, du commerce desquels elles excluent toutes les autres Nations, à cause que les possessions qu'elles y ont, sont privatives, dans lesquelles les sujets de l'Empereur ne les ont jamais troublées, & ne les troubleront jamais dans la suite.

Elles ont en outre des Châteaux, factoreries, & loges au Royaume de Bengale, sur les côtes de Cormandel, sur celles d'Afrique & ailleurs, où les Anglois, les François & d'autres Nations Européennes en ont aussi, où elles font pareillement un Commerce privatif, dans la possession duquel les Habitans des Païs-Bas Autrichiens ne les inquietent pas; c'est de quoi les Directeurs devront tomber d'accord.

Il est vrai, que les Directeurs disent, que les sujets de l'Empereur ont trafiqué, & trafiquent encore dans des districts, qui seroient dépendants de leurs places, Châteaux & loges, & que ce Commerce leur seroit défendu aussi bien, que celui de leurs dites places Châteaux, & loges: la raison en est, que comme le Commerce des Places principales appartient privativement aux dites Sociétés, à l'exclusion de tous autres, il s'ensuit de-là, que le Commerce



granted to our own Subjects rather than to Strangers; as also that they might be allow'd, to take part in this new Commerce, under their own names rather than under the names of Brabanders, and to follow the business directly, rather than by indirect means as they do at present: And if this were so every body may see that in a little time our privileges would come to nothing.

But if the Netherlanders say, that they abstain from all those countries and places in the East-Indies which are held by our Company on the account of trade; Pray what business have they in the Red sea? What upon the coasts of Malabar or Cormandel, which are almost all full of Castles, Fortresses, Lodges and Havens of our Company? What have they to do in the Gulf of Bengal? or in the trading places in the Moguls Country? to whom there was an Embassy sent very lately by our Company for the renewing of the Privileges and Contracts made with that Prince, which cost the Company near 240000 Ducats, or 1300000 Florins. What brings them to the Coasts of China where the Spaniards were never allow'd to trade since the peace of Munster? What brings them to the Island Ceylon, and other places? For at present they have left no part unattempted, but the Spice Islands, and a few towns, which indeed are in the possession of our Company, but are so prodigiously chargeable, that they together with their dependencies in the Dutch Indies cannot be kept and guarded without a yearly expence of 150000 Ducats, or 750000 Florins. But altho' what we here relate be so true that it cannot be denied by the Ship Officers and Masters themselves, who have lately begun to navigate from Ostend to the Indies; yet Mr. Neny has taken great pains to represent it otherwise in the following words.

*These Companies have Isles and Countries in the Indies, which are properly their own, from the Commerce of which they exclude all other Nations, because these Possessions are for them alone, and in those the Subjects of the Emperor have never yet, nor will hereafter molest them.*

*They have also Castles, Factories and Lodges in the Kingdom of Bengal, and on the Coasts of Cormandel, as well as in Africa, &c. where the English French and other European Nations have possessions likewise, where they trade exclusive of all others; there the Netherlanders do not disturb them, as the Directors themselves cannot deny.*

*Tis true the Directors say that the Subjects of the Emperor have traded and continue to trade to those places which are within their districts and which are dependancies of their settlements Forts, and Lodges, and to which they have as little right to trade, as to the settlements, Forts and factories themselves; and the reason is, that since the Commerce of the principal places belongs absolutely to them exclusive of all others, it follows that they have the same right exclusive in alther places which are dependancies of the said principal ones, because their right in those dependancies of their Fortresses is as good and effect-*

mercé de leurs dependances leur appartient aussi privativement , à cause que leur droit dans les dependances de leurs Forts est aussi bon & aussi efficace, que celui qu'elles ont dans les Forts mêmes.

Mais il est aussi vrai, qu'ils ont fourni par ce discours l'occasion de faire voir clairement, que leur raisonnement est Sophistique, & se réduit à une vraie illusion.

Car posant pour constant, que les dependances des places, Forts, & loges desdites Compagnies leur appartiennent en propre, comme leurs établissemens principaux, & qu'elles ont un Commerce privatif dans les dites dependances au même titre, que le Negoce de leurs places, Châteaux & Loges, leur appartient privativement, il s'ensuit de là d'une manière concluante, que les sujets de sa Majesté Imperiale, n'ont jamais commercé dans aucuns districts, Havres, ou Rivières, qui sont des dependances des places, & habitations des dites Sociétés, puisqu'ils n'ont trafiqué jusque à present, & ne pretendent jamais trafiquer, que dans les endroits où les François, les Anglois, & d'autres Européens commercent librement &c.

*Sermonem hunc satis esse perplexum, & cum rebus ipsis ac factis parum convenientem, facilius ignoscere possumus, quam silentio id præterire, quod hoc loco utique monendum est, Anglos nempe & Gallos, ceterasque Europæas Gentes, veluti Lusitanos & Danos, in regno Bengalenfi, & in tractu Cormanidelico, Commercium non exercere in locis nostris, aut ubi nos stationes habemus, sed in locis duntaxat, quæ illi populi antiquitus in his oris, permittente Principe, obtinuerunt, & possederunt. Quare argumentum, quod auctor ab his desumfit, ad alias Gentes, quæ eo nunquam navigaverunt, aut Commercium ulla exercuerunt, minime procedit; nedum hoc procederet ad talem Gentem, quæ expresso Fœdere una cum Hispanis ad abstinendum est obligata, quæque ad illas oras nunquam navigavit, ac per diversa Fœdera insequentia prohibita est, quoniam omnia Pacta & omnes Confederationes cum Cæs. & Cathol. Majestate eo pertinuerunt, ne scilicet in terris a Rege Hisp. antea possessis, & in ditionem Cæs. & Cathol. suæ Majestatis redigendis, novi aliquid induceretur, quo Commercium nostrum deteriora fierent in Indiis, vel alibi, quod latius Dissert. nostr. §. 15. & 16. demonstravimus.*

*Præterea, quamvis concedamus illud, quod Auctor hic dicit Vers. Il est vrai, nempe illum qui obtinet castrum, etiam jure sibi vindicare posse omnia commercia & emolumenta, ad illud castrum spectantia, quum in dependentiis non minus juris habeat, quoad commercia, quam in ipso castro, quod latius affirmat Solorz. de jure Indiarum lib. 3. cap. 3. n. 40. & seqq. atque etiam constat ex art. 5. Pacis Monast. ubi per Regem Hisp. ceduntur non tantum loca, castella, oppida, sed etiam commercia ad illa loca, Castella, &c. spectantia; negamus tamen Societatem Privilegiatam Indiarum Orientalium hoc argumento unquam usam esse, quoniam nos non agimus de commerciis particularibus, ad hæc vel illa loca aut castra spectantia.*

effectual, as their right in the Fortresses themselves.

But it is also certain that by this discourse they have given occasion for any one to see clearly, that their reasoning is nothing but sophistry and illusion.

For allowing it certain that the dependencies of their settlements, Forts and Lodges belong to them as properly as the Forts themselves, and that they have a right of commerce, in the said dependencies, exclusive of all others, by the same title that they have such right in their settlements, Forts and Lodges, it follows evidently that the Subjects of His Imp. Majesty have never traded to any districts, Havens or so manner depending on the places or Forts settlements of the said Companies, since they have never yet traded or pretended to trade, to any other places, than to such, as the French, English, and other people of Europe trade to freely &c.

One may easily pardon the perplexity of this discourse, & its unfairness in misrepresenting of facts, & pass it by in silence; but 'tis necessary in this place to remark that the English, French, or other Nations of Europe, as the Portugueze and Danes, do not trade in Bengal, or upon the Coasts of Cormandel, to any of our places, or where we have any settlements, but only to such places on these Coasts as they have formerly obtain'd and possess'd by the permission of the Inhabitants. Wherefore the argument which our Author has drawn from the practice of these Nations is good for nothing as tis apply'd to others who never had any trading or navigation to those parts; nor can it be at all apply'd to a People who along with the Spaniards were oblig'd by an expresse Treaty not to trade to those parts, who never did trade thither, and were by several subsequent Treaties prohibited from it: For all the contracts and Alliances made with His Imp. Majesty have had this in view, that nothing new should be introduced in those parts before possessed by the King of Spain, and to be reduced to the subjection of His Imp. Majesty, which might be detrimental to our Commerce in the Indies or elsewhere; as we have prov'd more fully in our first Dissert. Sect. XV. & XVI.

Moreover, altho' we may grant what our Author says in that paragraph, 'Tis true &c. (viz.) That he who has got a Fort may at the same time justly claim all the Commerce and emoluments belonging to that Fort, since his right as to Commerce is no less in the dependencies than in the Fort it self; which is more fully asserted by *Solorzano de Jure Indiarum*; and is also manifest from the V. Article of the Peace of Munster, by which the King of Spain yielded not only the Places, Forts, & Towns, but also all commerce belonging to the said Places, Forts &c. yet nevertheless we deny that ever the Dutch East-India Company has made use of this argument; because the dispute here is not for particular trading to this or that place or settlement, but for the general trade of that whole tract of Sea, in which the Spaniards were forbid to navigate: And this Mr. Neny himself does not deny, when he says; that tis agreed on and stipulated

L. III.  
Cap. 3. n.  
40. & seqq.

by Ref. 5. 1.



*ſpectantibus, ſed de univerſalibus, qua ſcilicet ſpectant ad totum tractum maris, quorſum. Hispanis Commerciorum cauſa navigare non licet; quod ipſe D. Neny §. 5. Refut. ſuæ non diffitetur, quum dicit: il eſt arrêté & conditionné par la clauſe finale du dit art. 5. que les Eſpagnols n'étendront pas leur navigation aux Indes Orientales, & que les Habitants des Provinces-Unies ſ'abſtiendront de frequenter les places poſſedées par les Caſtillans aux dites Indes, de forte que cette convention ne ſe borne pas à maintenir reſpectivement les parties contractantes dans leurs poſſeſſions aux Indes Orientales, comme il avoit été réglé auparavant par la dite ſeconde clauſe, à l'égard de toutes les dites Régions éloignées, mais ôte de plus aux Caſtillans la liberté d'étendre leur Commerce aux Indes Orientales, pour empêcher, qu'ils ne fiſſent des conquêtes ſur les Portugais, comme je l'ai déjà obſervé. Mais comme ce retranchement de liberté eſt limité en termes précis aux Indes Orientales, & aux Caſtillans, on ne peut l'étendre, ny aux Indes Occidentales, ny aux Côtes d'Afrique &c.*

*Cumque nemo arbitrari poſſit, P. P. D. D. Ordines in gratiam Luſitanorum ita ſtipulatos fuiſſe, ut vult actor hic & §. 2. Refut. ſuæ, nempe ad Indias illorum protegendas; præcipue ſi conſideretur, quod pax cum Luſitanis tunc nondum erat facta; contra vero tempus induciarum, anno 1641. inter illos & P. P. D. D. Ordines initurum, brevi erat exiturum; apparet ex his omnibus, auctores iſtiusmodi ſophiſmatum, de quibus loquitur auctor, non fuiſſe DD. Indiar. Orient. Directores, ſed illos, qui talia ex vanis cogitationibus ſibi fingunt, & aliis temere perſuadere cupiunt.*

*§. VI. Ultimo loco concludit D. Neny §. 6. Refut. ſuæ, ex Negotiatione, qua anno 1718. habita eſt Haga Comitum, ſuper articulis Tractatus de Barriere (quibus agitur de ſolutione debitorum Belgii Hiſpanici) PP. DD. Ordines tunc temporis in ea opinione non fuiſſe, quod nova iſta navigatio, qua Oſtenda erat inſtituta, Fœderibus adverſaretur, quoniam, inquit, durante hac negotiatione, per totum biennium, de ea re a PP. DD. Ordinibus nulla mentio facta eſt, licet tunc naves nonnullæ Oſtenda ad Indias mitti cœpiſſent.*

*Sed respondemus ad hanc objectionem, verum eſſe quod ab anno 1715. uſque ad annum 1718. naves quædam Oſtenda ad Indias navigaverunt, duplici quidem commiſſione, nempe ad depradandos hoſtes Caſ. & Cath. ſuæ Majeſtatis, & ſimul ad commercia exercenda iis in locis, ubi ſubditis Caſ. & Cathol. Majeſtatis, ſecundum Fœdera cum aliis gentibus commercia exercere liceret. Sed quam primum erat compertum, ejuſmodi naves, qua Flandrorum nomine tunc vela faciebant, iſta commiſſione Caſ. & Cath. ſuæ Majeſt. abuti, & hoc obtentu in locis Indiarum Occidentalium negotiari, ubi ſubditis Caſ. & Cath. ſuæ Majeſt. ſecundum Fœdera commercia exercere non licebat, una atque altera illarum navium a Societate Indiarum Occidentalium Fœderati Belgii capta eſt. Deinde cum etiam Societas Privilegiata Indiarum Orientalium comperiſſet, naves nonnullas ſimili modo ad Indias Orientales navigaſſe, & intra terminos ſui Privilegii commercia exercuiſſe; verum quidam eſt, Societatem iſtam ſuis Miniſtris in Indiis non ſtatim mandaſſe, ut ejuſmodi naves caperent, ſed ſolummodo interdixiſſe, ne huic novo atque illegitimo commercio faverent,*

by the final clause of the said 5 Article, that the Spaniards shall not extend their navigation in the East-Indies, and that the Dutch shall abstain from navigating to the places possessed by the Castilians in the said Indies, so that this contract does not only maintain the contracting Parties respectively in their bounds in the East-Indies, as it had been before regulated by the second clause, with regard to the said remote places, but it takes away from the Castilians the liberty of farther extending their Commerce in the East-Indies, to hinder them from making any Conquests on the Portuguese, as I have already observ'd. But since that restriction is in precise terms limited to the East-Indies and to the Castilians, it cannot be extended to the West-Indies or the Coasts of Africa &c.

Now since no body can imagine; that the States would have stipulated in favour of the Portuguese, to protect their Indies, so as our Author pretends here, and in his 2. Section; especially considering that the Peace was not at that time made with the Portuguese, but on the contrary the Truce made in 1641 between them and the States was just about expiring; One may reasonably conclude from this & other arguments of our Author, that the *Sophistry & Illusion* which he is pleased to attribute to the Directors of the East India Company, ought rather to be attributed to such as having formed silly arguments in their own brain, are weak enough to think to pass them for current on the world.

VI. In the last place Mr. *Nen* concludes, from his Negotiations at the Hague in 1718. upon those Articles of the Barrier Treaty relating to the payment of the debts of the Spanish Netherlands, that the States were not at that time of opinion, that this new Commerce begun at Ostend, was contrary to the Treaties, because, says he, for two whole years during this Negotiation there was not a word mentioned of it by the States, altho' the Ostenders had then begun to set our Ships for the Indies.

But we answer to this objection, that it is true indeed, that from the year 1715. to 1718. there were certain Ships sent from Ostend to the Indies with a double commission (viz) to take such Ships as were enemies to his Imp. Majesty, and at the same time to trade to such parts, as the Subjects of his said Imp. & Cath. Majesty, as well as those of other Nations were allow'd to trade to by the Treatys. But as soon as it was found, that some Ships of this sort sailing under Fleemish colours, had abus'd his said Imp. Majesty's Commission, by presuming under that pretence to trade to certain places in the West-Indies, where the Subjects of his said Imp. & Cath. Majesty were not allowed to trade by the Treaties, several of their Ships were taken by those of the Dutch West-India Company. Thereafter when our East-India Company found, that certain Ships under the same pretence had sail'd to the East-Indies, and traded within the limits of their Privilege, 'tis true, they did not give immediate orders to their Officers in the Indies to have such Ships taken, but only forbid them in any ways to favour this new and unlawful commerce, or to furnish the Masters of those ships with such necessaries, as they allowed to other European Nations lawfully trading thither;

præbendo scilicet navium magistris necessaria illa, quæ aliis Europæis populis legitime ad sua loca navigantibus præberi solent; & quæ nos subditis amicissimi semper Principis, in hoc casu, rerum nostrarum necessitate coactos, negare debere ex animo dolemus. Itidem cum prædicta Societas anno 1720. certior facta esset, incolas Belgii Austriaci, non obstante hoc interdicto, navigationes & commercia sua continuare, armis quidem abstinuit, sed nihilominus imploravit auxilium P. P. D. D. Ordinibus, petiisque, ut Illi tandem Cæs. & Cath. Majestati ostendere vellent, hanc navigationem cum Fœderibus non convenire: quod memorati DD. Ordines non abnuerunt, verum illud omnibus modis Cæs. & Cathol. Suae Majestati ostendere & notificare non destiterunt, adeo ut hæc lenta, & per legitimos tramites, a parte Societatis Indiarum Orientalium facta oppositio, retardata non sit ob juris defectum, sed honoris duntaxat & reverentiæ causa, quam se Augustissimo Imperatori semper debere profitetur. Quamobrem etiam hujusmodi cunctationem juri suo minime fraudi fore sperat: nec causam se prebere existumat, quapropter merito objicere quis posset, peccare nos in officia humanitatis, secundum quod ex Cicerone lib. 1. de Offic. huc adfert *Wetwoodus* cap. ult. de Domin. Maris; quando sine detrimento suo quis potest alteri commodare in iis, quæ sunt occupanti utilia & danti non molesta, quidni faceret? quum ita hæc res comparata sit, ut sine maximo detrimento omnino concedi non possit. Atque ut hoc exemplo uti nobis liceat, si Cæs. & Cath. suam Majestatem, cui salus subditorum suorum optimo jure cordi est, inutilitatem ipsorum cavere decuit per art. 17. Tractatus Antwerp. ne in territorio D. D. Ordinum prope Blankenberg ab illorum subditis piscatio in mari exerceretur; quanto magis P. P. D. D. Ordines curare æquum est, ne Offendæ contra tot Fœderum intentionem, tam insignis navigatio instituat, unde non tantum Privilegiatis Fœderati Belgii Societatibus, sed etiam Reipublicæ maximum detrimentum jussu metu præsagiendum est?

FINIS.



hither; and which they were heartily sorry, as the case stood, that they were, oblig'd to deny to the Subjects of so good an Allie as his Imp. Majesty. And when the said Company in 1720 were further assured that the Netherlanders notwithstanding this interdiction, did continue the said Navigation and Trade, 'tis true they made no use of arms, but they begg'd the assistance of the States, and desir'd that they would remonstrate to his Imp. Majesty that this navigation was not allowable by the Treatys. Which the said States agreed to, and did accordingly by all manner of ways notify and remonstrate the same to his said Imp. Majesty. So that this slow and methodical proceeding of the East-India Company in opposing the said Commerce, was not delay'd for want of right on their side, but only thro' their great respect to his Imp. Majesty. Wherefore the said Company hopes that such a respectfull forbearance for a little time, will not diminish their right: neither do they think that they have given any just occasion for any one to judge them guilty in point of Humanity, according to that of Tully l. 1. *de Offic.* made use of by *Welwood*, in his last Chapter *de Domin. Maris*; *when any one without any detriment to himself can oblige another with such things as may be of service to the receiver, and no injury to the giver, why should not he do it?* For the case here is such that we can yield nothing without a manifest detriment to our selves; and that I may be allow'd the use of this exemple: if his Imp. Majesty, to whom the welfare of his Subjects is justly dear, took so much care of their profit by the 17. rt. of the Treaty of Antwerp, as to prohibit the Subjects of the States from fishing in the sea near Blankenberg in the territories of the said States; how much more just is it for the States, to oppose this considerable navigation, undertaken at Ostend against the dir & intention of so many Treaties, & from which we may very justly presage an irreparable loss not only to the Companies of the United Provinces, but also to the Republick it self?

FINIS.

## APPENDIX N. I.

*Ex. Em. de Meteren, de la Traduction Française, imprimée à la Haye en 1618. Liv. XXII. fol. 487.*

**L**E susdit Goelman avoit pareillement charge de se plaindre des Marchands d'Anvers, de ce qu'ils negotioient sous le nom des Hollandois es Indes, & sous le nom des François & Ostrelins en Espagne, & se servoient ainsi de moyens & voyes obliques: car les Espagnols tachoient en toutes manieres de defendre ce trafic aux Provinces-Unies, pour ce qu'ils estimoient que par icelui ils trouvoient moyen d'entretenir la Guerre. Voila pourquoi aussi ils avoient defendu fort étroitement toutes les licences, & de ne laisser passer aucunes marchandises qu'on transportoit ou apportoit aux Provinces-Unies, & à cette fin fermèrent le passage du Rhin par le moyen de Rhinberg: & l'Adelantado ou l'Admiral d'Espagne, prenoit tous les Marchands & Patrons, qui étoient en Espagne, prisonniers, & faisoit de grandes recherches & inquisitions, tant à visiter leurs Livres de comptes, qu'à les torturer, si tôt qu'il avoit decouvert le trafic qu'ils faisoient: puis après il condamnoit les uns aux Galeres, & les autres il les punissoit de mort. La recherche & l'examen qu'il faisoit, étoit de savoir, quel argent, & quels Reaux d'Espagne ils avoient (contre la defense faite) emporté hors d'Espagne, & si les Marchandises qu'ils avoient, ne venoient pas des Provinces-Unies, ou d'Angleterre. Voila pourquoi aussi le susdit Goelman requit qu'on pût visiter les Comptoirs, Livres de Comptes, & écrits de quelques Marchands d'Anvers, pour voir si on ne trouveroit point telles ou semblables fraudes: car ils pensoient que par ce moyen ils ôteroient tout le trafic à leurs Ennemis; mais cela ne se peut pratiquer, ni en Anvers, ni es Pais-bas. Tellement que le susdit Adelantado, après avoir exercé beaucoup de tyrannie à l'endroit des Marchands & Patrons du Pais bas en commun, il les contraignit enfin à s'accorder pour ce qui s'étoit passé, & leur fit payer, au mois de Mars l'an 1601. quelques six cent mille Duckets, ou davantage.

No: I I.

*Edictum PP. DD. Ordin. Gen. Fæd. Belgii die 11. August. 1718.*

**D**E Staten Generaal der Vereenigde Nederlanden, alle den genen die desen sullen sien of hooren lezen, SALUT: Doen te weten, also Wy onlangs goetgevonden hebben, het Oütroy voor dezen aan de Oost-Indische Compagnie dezer landen verleent, en 11

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APPENDIX N<sup>o</sup>. I.

From the French translation of Emmanuel van Meterens History of the Low Countries, printed at the Hague in 1618. L. XXII. fol. 487.

THE said *Gusman* had also orders to complain of the Merchants of Antwerp because they traded to the Indies under the name of Hollanders, as they did also in Spain under the names of French or Easterlings, using thus indirect ways & methods: For the Spaniards tried all ways to hinder the United Provinces from this trade, because they thought it furnished them with means of maintaining the war. 'Twas for this reason they had strictly forbid all Passports, & all exportation or importation of goods into the United Provinces, for which end they had lockt up the passage of the Rhin by the Fortresse of Rhinberg. In Spain the Governours or Admiral imprisoned all the Merchants or Masters of Ships, examined them & their books with great rigour, & even tortured them to discover what trade they were driving; & often condemned some to the Gallies & others to death. Their perquisitions tended to discover if any silver or Spanish Ryals were carried out of Spain, contrary to the prohibition, or if any of their goods were come from the United Provinces, or from England. So this *Gusman* required that the Counting houses, Books & papers of the Merchants of Antwerp might be examined, to see if there might not be found of these or such like frauds; for by those means they fancied they might cut off all the trade of their Enemys: but that was not practicable in Antwerp, nor in the Netherlands. Yet at last by the cruelties of the Governours, & the tyrannical usage of the Merchants & Masters of the Netherlands, they were forced to compound for what was past, & to pay in March 1601. some six hundred thousand ducats, or more.

## No. I I.

Edict of the H. M. Lords States General of the United Provinces, published on the 11 of August. 1698.

THE States General of the United Provinces, make known to all & every one that shall see or hear these presents, that we having thought fit lately to renew the Patent formerly granted to the East-India Company of these Provinces



meermalen gecontinueert, wederom te continueren, ende te prolongeren voor den tyd van Veertigh Jaeren, na Expiratie van het tegenwoordige Oñtroy, het welke eyndigt met dese loopende Eeuwte; en sulks tot op alle de Pointen ende Artijkelen daar in, als mede in de Prolongatie van de twee-en twintigsten December seftien hondert twee-en twintig, ende in de ampliatie, en interpretatien van dien begreepen, misgaders op de Resolutien ende Authorisatien naderhand van tyd tot tyd daar op gevolgt, SOO IS 'T dat wy by dese Onse verkondinge en publicatie van de voorschreeven verleende Continuatie en prolongatie, aan alle en een ygelyk kennis hebben willen geven, en notificatie doen, op dat een yder mogte weten, dat niemand anders als die van de gemelde Oost-Indische Compagnie geduurende den tyd van het voorschreeve Oñtroy, binnen de limiten van het zelve nyt deeze Landen zal moogen varen of handelen, en ten eynde alle pointen, vryheeden en voordeelen, aan de gemelde Compagnie geaccordeert, by alle en een ygelyk van de ingezetenen van den Staat onderhouden mogen worden, zonder daar tegen te doen directelyk ofte indirectelyk binnen of buyten 's Lands, op de pannen in het selve Oñtroy begreepen. &c.

## Nº. I I I.

*Extract uyt het Register der Resolutien vande Ho. Mo. Heeren Staten Generael der Vereenigde Nederlanden.*

Lunæ den 11 Augusti 1698.

**D**e Heeren Gedeput: vande Provincie van Holland en Westvriesland, hebben ter vergaderinge voorgedraegen, dat, wanneer Haer Ho. Mo. Successively hebben gelieven te prolongeren het Oñtroy aende Oost-Indische Compagnie desey Landen vergunt, deselve somwylen meede wel hadden gelieven van soodanige Prolongatien, by Placcaet alomme kennisse te geven, ten eynde alsoo een yder soude mogen weten, dat niemand anders, als die van de gem. Compagnie, geduurende den tyd van 't Oñtroy, binnen de limiten van 's selve, uit deeze Landen soude mogen varen, ofte handelen, ende ten eindten meede alle pointen vryheeden ende voordeelen aende gem. Compagnie geaccordeert, des te beeter by alle de onderdanen van den Staat onderhouden soude mogen werden, sonder daar tegen te doen, directelyk of indirectelyk, ende dat noch binnen deeze Landen, noch daar buyten. Dat verders Haer Ho: Mo: tot maintien vande gem. Compagnie ende op dat deselve ook door geen indirecte wegen soude werden benadeelt, verscheide Placcaten haden laten emaneren, en wanneer die of eenigzints in ongebruik waren geraakt, ofte na de gelegentheyd van de tyd meer moesten worden geschikt, deselven Placcaten telkens hadden gerenoveert, specialyk meede die, waer door alle ende een yder wierde verboden vande eene zyde, eenige onderdanen, ofte

vinces, at different times continued, & now again to prolong it for forty years after the expiration of of the present Oñroy, which ends with this century; & to confirm all points & articles therein contained, or in the Prolongation granted on the 22. Dec. 1622. or in the amplification or explanations of the same, as likewise in the Resolutions & Authorisations that have from time to time followed thereupon. THEREFOR WE, by this Proclamation, give notice to all whom it may concern, of this new Prolongation abovementioned, that all men may know, that it is not lawfull for any other but those of the said East-India Company to trade or navigate from this Country, within the limits marked in the said Patent & during the term of years therein prescribed; and that all the Inhabitants of these Provinces may observe all the Articles, Libertys, & Privileges granted to the said Company, without doing any thing to the contrary, directly or indirectly, at home or abroad, upon the penaltys mentioned in the said Patent &c.

### Nº. I I I.

Extract from the Journal of the Resolutions of the H.M. Lords States General of the United Provinces, of Mundy 11 August 1698.

THE Deputys of the Province of Holland & Westfriesland have represented in the Assembly, that upon the several prolongations of the Patent of the East-India Company of these Provinces, their H. M. have commonly thought fit to give notice of such Prolongations by publick Proclamations affixed every where, that so every one might be warned that it was unlawful for any other but those of the said Company, during the term of years of the said Patent, to navigate or trade from these Provinces, within the limits there marked; & that all the articles, liberties, & privileges granted to the said Company might the better be observed by all the Subjects of this State, so as nothing might be done to the contrary directly or indirectly, either within these Provinces or abroad: And that their H. M. had made several Edicts for maintaining of the said Company, & for hindering its being prejudiced by indirect means, had frequently renewed them when they were any ways neglected, or when any conjuncture required it, & particularly that by which it is strictly enjoined on the one hand that no body shall entice or engage any subject or inhabitant of this country especially seamen, to go to the East-Indies in any foreign service; all which & the pains enacted for the transgressors may be seen at length in the different Edicts of their H. M. of the 1 July & 9 September 1606. of the 8 December 1616. 14 December 1617. 4 of May 1632. 14 August 1674. & 8 October 1680. That the said States of Holland,

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their

ofte inwoonders deeser Landen, en voornamentlyk eenige Zee-vaarende luyden te disponieren, ofte te huuren tot eenigen vreemden dienst na Oost-Indien; ende aan de andere zyde, zigh tot sodanigen vreemden dienst te verhuuren, ofte te begeven, zoo als van alle het selve, ende van de peinen tegens de contraventeurs gestatueert, breeder konde blyken uit Haar Ho: Mo: successive placcaten van den 1 July en 9 September 1606. 8 December 1616. 14 December 1627. 4 Mey 1632. 14. Augustus 1674. en 8 October 1680. dat de Heeren Staten haare principalen op alle het geene voorsz. aandagelyk hebbende gereflecteert ende verders in achtinge genomen, dat het Oostroy voor de gem. Compagnie onlangs wederom was geprolongeert, dienvolgende hadden geoordeelt, dat het van groote dienst ende vrugt zonde zyn, dat van deese laaiste prolongatie meede by Placcaet van Haar Ho: Mo: alomme kennisse zoude worden gegeven, en met eenen gerenoveert specialyk den inhoudende vande Placcaten hier boven gemeld, met die elucidatie van sodanige punten, als sommige haar wel abusivelyk vermynen by de voor Placcaten niet te wesen verboden, hebbende vervolgens aan haar Heeren Gedeput: gelaft, de saake te brengen ter kennisse van Haar Ho: Mo: en te verzoeken, dat Haar Ho: by Placcaet nogmaals geliefden te ordonneren; Eerstelyk dat geen Ingesetenen, ofte Inwoonders deser Landen, souden vermogen gedurende den tyd van het voorn. geprolongeerde Oostroy, dat is tot den jaare 1740 inclusys, te varen of handelen op Oost-Indien, directelyk of indirectelyk, en selve meede niet te senden, ofte aan andere daar naar toegaande, 't zy beediende van de Compagnie ofte andere, meede te geven eenige goederen of coopmanschappen, op halve of meerdere of mindere winste, of ooke eenige goederen of coopmanschappen van daar herwaarts te laten komen. Ten anderen dat geene Ingesetenen, of Inwoonders deser Landen, ende specialyk geen Zee varende luyden, haar zouden vermogen te be-geven in dienst van eenige Koningen. Princen, ofte buytenlandsche Oostyndische Compagnie, ofte ook wel van andere particuliere uitreeters, ofte handelaars in die Ryken, of Landen, om met derselver scheepen naar Oost-Indiente varen, ofte daar te handelen; ende by aldien zy zulx albereyts zouden mogen hebben gedaan, dat zy luyden de voorn. diensten zouden hebben te verlaten, ende hun ten langsten binnen den tyd van drie maanden weder hier te lande ter plaatse harer residentie te be-geven. Ende ten derden, dat niemant van de onderdanen, ofte Ingesetenen van den Staat eenige inlaage zouden vermoogen te doen te participeren, ofte zigh in eeniger maniere te interfferen in eenige buytenlandse Oostindische Compagnien, ofte haar in te laten in eenige vaarten, of handel, derwelke door deesen, of geene particuliere uitreeters of handelaars, uit de voorn. andere Ryken of Landen naar Oost-Indien, zouden mogen werden ondernomen, ende dat op de peinen hier naar volgende; als voornamentlyk, ten opzichte van het voorsz. eerste lidt, op de peinen in het voorsz. Oostroy begrepen, ende daarenboven, dat het geene by de Contraventeurs inwoegen voorsz. naar Oost-Indien gesonden, meede gegeven, of wel van daar ontfangen zoude worden, zoude moeten blyven ten behoeve van de gem. Compagnie, ende dat deselve Contraventeurs nogh boven dien zoude verbuuren viermaal soo veel, als het voorsz.



their Constituents, having seriously reflected on these matters, & considered that the Privilege of the said Company was lately prolonge'd again, were of opinion that it would be of good effect & use that this new prolongation were made publick every where by order of their H. M. & that at the same time the abovementioned Edicts were renewed, with certain explications of some points that several persons erroneously fancied were not comprehended in the Edicts they had consequently ordered their said Deputys to propose this to their H. M. & desire they would again statute by a new Edict; I. That no Subjects or Inhabitants of this Country shall be allowed, during the time of this prolongation, that is to the year 1740. inclusive, to navigate or trade to the East-Indies directly or indirectly, nor to send with any body going thither, either in the service of the Company or otherwise, any goods or merchandise, on half profit or more or less, nor yet to let any goods or merchandise be fetched from thence. II. That no Inhabitants of these Provinces, especially Seafaring men, shall presume to engage in the service of any King, Prince, or East-India Company of another country, or of any other privat adventurer or trader in such Countrys, to sail or trade in their Ships to the East-Indies; or in case any should be so engaged that they shall immediatly leave such service, & return here again to their places of residence within three months at farthest. III. That no Inhabitant or Subject of this State shall take any share or portion, or be any way concerned in any foreign East-India Company, or in any way meddle in any navigation or trade that may be undertaken by any particular Trader or Adventurer of such foreign Countrys to the East-Indies: And that on the penaltys hereafter specified, viz. As to the first article that, beside the penaltys contained in the said Privilege, whatever shall be found so sent to the East-Indies by any person contrary to this prohibition, or received from thence, shall be confiscated to the profit of the said East-India Company, beside four times the value which such transgressors shall forfeit, to be applied one third to the discoverer, one third to the Officer that shall prosecute them, & the other third for the poor. As for the second Article, on the penaltys appointed against such delinquents by the forementioned Edict of 8 October 1680. And for the third Article, that the persons so transgressing shall forfeit the value of the summe or share they shall have engaged for or laid in in to such foreign E. India Company, or with such particular adventurers of other Countrys trading to the E. Indies, & that as often as they shall have laid in any summe, or engaged for any portion in such foreign Company or trade, or being once challenged for it shall afterwards continue in it, to be applied as a bove. **WHEREUPON** after deliberation it is resolved and ordained that in conformity to what is here proposed a Proclamation shall be issued out, & be printed & published every where as soon as possible in the usual manner &c.

verbeurd zoude bedraegen, te appliceren een derde voordien aan brenger, een derde voordien Officier, die de Calange zal komen te doen, ende een derden voor den armen. Ten opzichte van 't voorz tweede lid, op de peine van 't voorz laatste placcaat van den 8 October 1680 jegens de overtreeters van dien gestatueert. Ende ten opzichte van 't voorz derde lid, dat de Contraventeurs des aangaande zouden verbuuren de waarde van de inlage, ofte van de portie, waar voor zy zullen hebben geparticipeert ofte wesen geïnteresseert in eenige buytenlandsche Oost Ind. Compagnie ofte in eenige vaarten ofte handel, dewelke door desen, of geene particuliere uytreders of handelaars uyt andere Ryken ofte Landen, naar Oost-Indien zouden wesen ondernomen, soo meenigmaal zy de inlaage gedaan, ofte portie, ofte aandeel inde voorz buytenlandsche Compagnien vaarten ofte handel, genomen zullen hebben, ofte gecalculeert zynde, naderhand egter daarin mogten hebben gecontinueert; te appliceren als vooren. Waarop gedelibereert zynde, is goedgevonden en verstaan, dat conform het voorn. geproponeerde, een placcaat zal geëmaniceert, ende het selve ten spoedigste gedrukt en alomme afgesonden werden, om gepubliceert ende geaffigeert te werden naar behoren.

Accordeert met 't voorz Register.

F. FAGEL.

## N. V.

*Diploma Aug: Imp: Ferdinandi III. super art. 53. pacis Monasteriensis, die sexta Julii 1648.*

**F**erdinandus III. Divina favente Clementia electus Romanorum Imperator semper Augustus, ac Germaniæ, Hungariæ, Bohemiæ, Dalmatiæ, Croatiae, Slavoniæ Rex, Archidux Austriæ, Dux Burgundiæ, Brabantiae, Styriæ, Carinthiæ, Carniole, & Marchio Moraviæ, Dux Luxemburgi ac superioris & inferioris Silesiæ, Wirtembergiæ, & Teckæ, Princeps Sueviæ, Comes Habsburgi, Tirolis, Ferreti, Kyburgi & Goritiæ, Landgravius Alsatiae Marchio S. Rom. Imperii; Burgoviæ, ac superioris & inferioris Lusatiae, Dominus Marchiæ, Slavoniæ, portus Maonis & Salinarum &c. Agnoscimus & notum facimus tenore præsentium universis, quod cum nobis ex parte Serenissimi Hispaniarum Regis Catholici & Conſobrini, Generi & fratris nostri Charissimi, demisse fuerit expositum, in pace nuper inter Serenitatem suam ex una, atque Status & Ordines Generales Fœderatarum Belgii Provinciarum ex altera parte, Deo bene juvante, conclusa ac publicata, inter alia contineri articulum, Ordine quinquagesimum tertium, hujus qui sequitur, ex Gallico in Latinum translati tenoris.

Dicitur

N<sup>o</sup>. I V.

Copie of a *Proclamation* published in JAMAICA against the Scotch Colony at Darien. Taken from the *Collection of State Tracts* in K. Williams Reign. Vol. III. p. 535.

By the Honourable Sir *William Beeston* Knight, Governour & Commander in Chief for his Majesty in the Island of Jamaica, and of the Territories & Dependencies of the same, & Admiral thereof.

W<sup>H</sup>ereas I have receiv'd orders from his Majesty, by the Right Honourable *James Vernon*, one of the principal Secretaries of State, importing, that his Majesty was not inform'd of the intentions and designs of the Scots in peopling *Darien*, which is contrary to the peace between His Majesty and his Allies, commanding me not to afford them any Assistance: in compliance therewith, in His Majesty's name, and by his order, I do strictly charge and require all and every His Majesty's Subjects, that upon no pretence whatsoever they hold any correspondence with the Scots aforesaid, or give them any assistance, with Arms, Ammunition, provision, or any thing whatsoever, either by themselves or any other for them; nor assist them with any of their shipping, or of the English Nations, upon pain of his Majesty's displeasure, & suffering the severest punishment. Given under my hand & seal of Arms, the 9th. of April, 1699. and in the eleventh Year of the Reign of William the third, King of England, Scotland, France & Ireland, & Lord of Jamaica, Defender of the Faith, &c.

N<sup>o</sup>. V.

Act of approbation, given by His Imp. Maj. Ferdinand III. upon the 53. Article of the Treaty of Munster. July 6. 1648.

F<sup>ERDINAND</sup> III. by the grace of God, elected Emperour of the Romans, ever August, & King of Germany, Hungary, Bohemia, Dalmatia, Croatia & Slavonia, Archduke of Austria, Duke of Burgundy, Brabant, Stiria, Carinthia, Carniola, & Marquis of Moravia; Duke of Luxemburg & of the upper & lower Silesia, of Wirtemberg, & of Teck, Prince of Suabia, Count of Hapsburg, Tyrol, Ferret, Kyburg, & Gorlitz; Landgrave of Alsatia; Marquis of the holy Roman Empire, of Burgaw, & of upper & lower Lusatia, Lord of Marck, of Slavonia, of Port Mahon & of Salins &c. We acknowledge & make



Dictus Dominus Rex obligat se effective ad procuracionem continuationis & observationis Neutralitatis, amicitiae & bonae vicinitatis ex parte suae Cæsareae Majestatis & Imperii cum Dominis Ordinibus, ad quam continuationem & observationem prædicti Domini Ordines reciproce pariter se obligant, sequeturque super eo confirmatio suae Cæsareae Majestatis intra spatium duorum mensium, ex parte vero Imperii intra Annum a conclusione & ratificatione præsentis Tractatus.

*Ac proinde supplicatum, ut Nos pro nostra parte dictum Articulum clementer approbare, ratum habere atque confirmare dignaremur. Nos, re mature ac diligenter deliberata, propensissimo nostro in pacem quaque versum promovendam ac propagandam studio, in ejusmodi petitionem clementer annuerimus, dictumque articulum ejusque contenta, quatenus ea ad Nos pertinent, pro nostra parte approbaverimus, ratificaverimus, prout hisce ex certa scientia, autoritate nostra Imperiali approbamus, ratificamus & confirmamus, eadem autoritate & scientia volentes, declarantes & statuentes, quod non modo nos contra eundem Articulum ejusque contenta, quatenus ea ad nos pertinent, directe vel indirecte nihil committere, sed nec ab aliis fieri vel committi permittere velimus: In cujus rei fidem præsentis manu nostra subscripsimus, & sigilli nostri Cæsarei appensione communiri fecimus: quæ dabantur in Arce nostra Lincii, Sexto Julii, Anno Domini 1658. Regni Hungarici 23 Bohemici vero 21.*

**FERDINANDUS.**

*Ferdinandus Comes Curitus V.*

*Ad mandatum S. Cæs. Majest.  
proprium*

**WALDERADE**

make known to all men by these presents that whereas it has been humbly represented to us in the name of the most serene Catholick King of Spain, our dear Brother, Cousin, & Son in law, that in the peace lately concluded, by God's grace, & published, between his Serenity on the one side, and the States General of the United Provinces of the Low Countries on the other, there is, among others, one Article, the fifty third in order, of the following tenor, as translated out of French.

*The aforesaid King obliges himself to procure effectually the continuation & observance of the neutrality, friendship & good neighbourhood of His Imp. Majesty & the Empire with the said States; to which continuation & observance the said States also oblige themselves reciprocally: And this shall be confirmed by His said Imp. Majesty in two months, & by the Empire, in a year after the conclusion & ratification of this Treaty.*

And being requested that we for our part would be graciously pleased to approve ratify & confirm the said Article, we having ripely & fully examined the matter, thro' our singular & earnest desire of promoting & maintaining peace every where, doe graciously grant this request, in approving & ratifying for our part the said Article & the contents thereof in as far as they concern us; As we doe hereby, of our certain knowlege, & by our Imperial Authority approve, ratify & confirm them, willing, declaring & ordaining, by the same authority & knowlege, that nothing shall be done by us directly or indirectly against the contents of the said Article, as far as it concerns us, & likewise that we will not allow any thing contrary to be done or committed by others. In testimony whereof we have signed this with our own hand, & appointed our Imperial Seal to be annexed hereto. Given in our Palace of Lintz on the sixth day of July, in the year of our Lord 1648. & of our Reign in Hungury 23. in Bohemia 21.

*Signed*

FERDINANDUS,

*Ferdinand Count Curtz Vr.*

By express order of His Sac. Imp. Majesty,

WALDERADE.

